

# **Specified Special Tax and Fees Regulations**

## **Section 100**

Complete Rule Making File

*OAL Approval with Approved Text Specified Special Tax and Fees Regulations*

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### **Other Documents Relied upon**

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**State of California  
Office of Administrative Law**

**In re:**

**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections:** 3500  
**Amend sections:** 2300, 2401, 3502, 4041,  
4500, 4508, 4701, 4702,  
4703, 4901

**NOTICE OF APPROVAL OF CHANGES  
WITHOUT REGULATORY EFFECT**

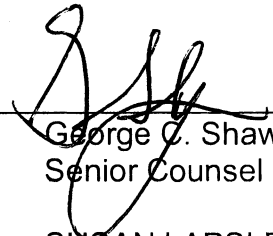
**California Code of Regulations, Title 1,  
Section 100**

**OAL File No. 2010-0218-03 N**

This action makes several changes without regulatory effect to update existing regulations to make them consistent with statutory changes. These changes include authority and reference citations, definitions and other non-substantive changes.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

**Date:** 3/30/2010



George C. Shaw  
Senior Counsel

**For:** SUSAN LAPSLEY  
Director

**Original:** Ramon Hirsig  
**Copy:** Richard Bennion

**RECEIVED**

APR 01 2010

**Board Proceedings**

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**SUSAN LAPSLEY**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: 4/5/2010  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2010-0218-03N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0218-03N regarding Specified Special Tax and Fees Regulations).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30<sup>th</sup> Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NONSUBSTANTIVE

(See instructions on  
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

<b>OAL FILE NUMBER</b> Z-	<b>NOTICE FILE NUMBER</b> Z-	<b>REGULATORY ACTION NUMBER</b> 2010-0218-03N	<b>EMERGENCY NUMBER</b> 
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization		AGENCY FILE NUMBER (if any)	

2010 FEB 18 PM 12:55  
OFFICE OF  
ADMINISTRATIVE LAW

2010 MAR 30 PM 1:25  
Debra Bowen  
DEBRA BOWEN  
SECRETARY OF STATE

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Specified Special Tax and Fees Regulations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)			
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)					
<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 3500			
		AMEND 2300, 2401, 3502, 4041, 4500, 4508, 4701, 4702, 4703, 4901			
TITLE(S) 18		REPEAL			
3. TYPE OF FILING					
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only					
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)					
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____					
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____					
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

February 18, 2010

TYPED NAME AND TITLE OF SIGNATORY

Diane G. Olson, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 30 2010

Office of Administrative Law



## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 2300. Collection of Surcharge.**

Every electric utility making sales of electrical energy to consumers in this state shall collect the surcharge from each consumer other than a consumer that is an electric utility or is exempt under Chapter 3, of Part 19 of Division 2 of the Revenue and Taxation Code, at the time it collects its billing from the consumer for the electrical energy sold. A consumer is any person receiving electrical energy furnished by an electric utility and includes a person receiving electrical energy for redistribution for the use of his tenants.

Second Paragraph . . . (unchanged).

Third Paragraph . . . (unchanged).

Fourth Paragraph . . . (unchanged).

Fifth Paragraph . . . (unchanged).

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections ~~40001-40191~~40019, 40019.1, 40020, and 40045, Revenue and Taxation Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 2401. Definitions.**

##### **(a) Service Supplier.**

(1) "Service Supplier" means ~~any person supplying intrastate telephone communication services to any service user in this state, provided however:~~both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

##### **(2) Notwithstanding paragraph (1):**

(A1) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B2) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either:

(1) A telephonic quality communication for which there is a toll charge for the service which varies in amount with the distance and elapsed transmission time that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication; as well as or

(2) Aa service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, and 41021, Revenue and Taxation Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 3500. Application of the Fee Collection Procedures Law.**

**The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, and Water Rights Fee.**

**Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code, Section 44003, Revenue and Taxation Code; Section 1537, Water Code.**

#### **Regulation 3502. Relief from Liability.**

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Fee Collection Procedures Law, Part 30, (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on written advice given by the board described in California Code of Regulations, Title 18, Section 4902.

~~**The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Ballast Water Management Fee, and Natural Gas Surcharge.**~~

**Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Section 55045, Revenue and Taxation Code.**

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 4041. Common Carrier Delivery Reports.**

Every common carrier making a delivery of cigarettes to a consignee in this State, the shipment of which originated outside this State, shall report to the board not later than the 25th day of the calendar month following the calendar month in which the delivery of the cigarettes or tobacco products was made, the following information concerning the shipment:

- (a) . . . (Unchanged);
- (b) . . . (Unchanged);
- (c) . . . (Unchanged);
- (d) the number of cases, bales or other containers of cigarettes delivered, ~~and the quantity of cigarettes contained therein, and the quantity of tobacco products delivered,~~ as shown by the shipping documents; and
- (e) . . . (Unchanged); and
- (f) . . . (Unchanged).

This report shall be made on a form prescribed by the Board, which may include, but not be limited to, electronic media, and filed with the Board at Sacramento.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30186 and 30454, Revenue and Taxation Code.

**Text of Proposed Changes to  
Title 18. Public Revenue**

**Regulation 4500. Definitions.**

In addition to the definitions in Business and Professions Code section 22971, the following definitions shall apply to this chapter:

- (a) . . . (unchanged).
- (b) . . . (unchanged).
- (c) . . . (unchanged).
- (d) . . . (unchanged).
- (e) "Board" means the Board Members of the State Board of Equalization meeting as a body or the agency created by article XIII, section 917, of the California Constitution, as the context indicates.
- (f) . . . (unchanged).
- (g) . . . (unchanged).
- (h) . . . (unchanged).
- (i) . . . (unchanged).
- (j) . . . (unchanged).
- (k) . . . (unchanged).
- (l) . . . (unchanged).
- (m) . . . (unchanged).
- (n) . . . (unchanged).
- (o) . . . (unchanged).
- (p) . . . (unchanged).
- (q) . . . (unchanged).
- (r) . . . (unchanged).
- (s) . . . (unchanged).
- (t) . . . (unchanged).
- (u) . . . (unchanged).
- (v) . . . (unchanged).

**Note:** Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22970, 22971, 22974.5, 22978.7 and 22979.7, Business and Professions Code; and Section ~~22971(n)~~30010, Revenue and Taxation Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

**Regulation 4508. Appeal - Denial of License.**

**(a) . . . (Unchanged).**

**(b) . . . (Unchanged).**

**(c) The Board shall reconsider the determination of the Excise Taxes Division pursuant to its administrative appeals process set forth in ~~Regulation 5023~~article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in ~~Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087~~Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.**

**(d) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the applicant, except as provided in Regulation 5560, subdivision (b)~~Regulation 5082.~~**

**(e) . . . (Unchanged).**

**Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.**

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 4701. Appeal - Appeals Division.**

(a) . . . (Unchanged).

(b) Conference. Upon receipt of a Request for Appeals Conference, a conference will be scheduled and held as set forth in ~~Regulation 5023~~article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations, unless otherwise provided herein. The conference shall allow a licensee or unlicensed person an opportunity to show cause why the Warning Notice, Notice of Violation, or Notice of First Decision, and the penalty or penalties imposed therein, should not be upheld.

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(c) Decision. The Appeals Division shall issue a Notice of Second Decision following the conference. The Notice of Second Decision will set forth the Appeals Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights, if any, as set forth in subdivisions (e) and (f) below.

(d) . . . (Unchanged).

(e) . . . (Unchanged).

(f) . . . (Unchanged).

**Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.**



**Text of Proposed Changes to  
Title 18. Public Revenue**

**Regulation 4702. Appeal - Board Hearing.**

(a) . . . (Unchanged).

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(4) . . . (Unchanged).

(b) When applicable, upon receipt of the Request for Board Hearing, a Board hearing shall be scheduled and conducted in accordance with the procedures as set forth in ~~Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087~~ Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576, to allow the licensee or unlicensed person an opportunity to show cause why the Notice of Violation or Notice of Second Decision, and the penalty or penalties imposed therein, should not be upheld. Following the Board hearing, a Notice of Board Decision will be mailed to the licensee or unlicensed person.

**Note:** Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

**Text of Proposed Changes to  
Title 18. Public Revenue**

**Regulation 4703. Seizures and Forfeitures.**

(a) . . . (Unchanged).

**(b) Seizure of Untaxed Products.**

(1) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(C) . . . (Unchanged).

(D) . . . (Unchanged).

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized by the ~~Investigations Division~~Board or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

**(c) Seizure of Product From Persons Without a Valid License.** The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid, when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

**(1) Unlicensed Persons.**

**(A) ... (Unchanged).**

**(B) ... (Unchanged).**

**(2) ... (Unchanged).**

**(A) ... (Unchanged).**

**(B) ... (Unchanged).**

**(3) Forfeiture.** Any cigarettes and tobacco products seized by the ~~board~~Board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

**(4) ... (Unchanged).**

**(d) Evidence ~~Required For~~Relevant to Recovery of Product.** Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

**(1) ... (Unchanged).**

**(2) ... (Unchanged).**

**(3) ... (Unchanged).**

**(4) ... (Unchanged).**

**(5) ... (Unchanged).**

**(6) ... (Unchanged).**

**(7) ... (Unchanged).**

**(8) ... (Unchanged).**

(e) . . . (Unchanged).

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(f) . . . (Unchanged).

**Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22971(l) and (m), 22974.3(a) and (b), 22978.2(a) and (b) and 22980.2(c), Business and Professions Code; and Sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Revenue and Taxation Code.**

**Text of Proposed Changes to**

**Title 18. Public Revenue**

**Regulation 4901. Records.**

**(a) Definitions.**

**(1) "Applicable Tax Laws" means any of the following:**

**(A) . . . (unchanged);**

**(B) . . . (unchanged);**

**(C) ~~Ballast Water Management Fee~~ Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;**

**(D) . . . (unchanged);**

**(E) . . . (unchanged);**

**(F) . . . (unchanged);**

**(G) . . . (unchanged);**

**(H) . . . (unchanged);**

**(I) . . . (unchanged);**

**(J) . . . (unchanged);**

**(K) . . . (unchanged);**

**(L) . . . (unchanged);**

**(M) . . . (unchanged);**

**(N) . . . (unchanged);**

**(O) . . . (unchanged);**

**(P) . . . (unchanged);**

**(Q) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;**

**(R) Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;**

**(S) Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.**

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged.)

(6) . . . (unchanged).

(7) . . . (unchanged).

(b) General. . . (unchanged).

(c) Machine-Sensible Records. . . (unchanged).

(d) Machine-Sensible Records Maintenance Requirements. . . (unchanged).

(e) Access to Machine-Sensible Records. . . (unchanged).

(f) Taxpayer Responsibility and Discretionary Authority. . . (unchanged).

(g) Hardcopy Records. . . (unchanged).

(h) Alternative Storage Media. . . (unchanged).

(i) Record Retention – Time Period. . . (unchanged).

(j) Record Retention Limitation Agreements. . . (unchanged).

(k) Failure to Maintain Records. . . (unchanged).

**Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605 and 60606, Revenue and Taxation Code.**

# Memorandum

To : George Shaw  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

2010 MAR 29 AM 11:54

Date: March 29, 2010

OFFICE OF  
ADMINISTRATIVE LAW

From : Richard Bennion  
Regulations Coordinator  
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2010-0218-03N*  
Specified Special Tax and Fees Regulation

This memo is to provide you authorization to:

- 1) Substitute the version of the final text attached to the form 400.

Thank you,



Richard Bennion  
Regulations Coordinator  
Board of Equalization

If you have any questions or comments, please notify me at (916) 445-2130 or email at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov).

Agency	FILE#	Case type	Caption/Subject	Decision
State Water Resources Control Board	2010-0112-06	S	BPA to Establish a TMDL for Mercury in the Guadalupe River Watershed	APPROVAL
State Water Resources Control Board	2010-0112-05	S	San Francisco Bay PCB TMDL	APPROVAL
State Water Resources Control Board	2010-0121-05	C	Storage of biodiesel blends in underground storage tanks	APPROVAL
State Water Resources Control Board	2010-0210-02	EE	Storage of Biodiesel Blends in Underground Storage Tanks	APPROVAL
State Water Resources Control Board	2009-1215-02	S	Upper Santa Clara River Chloride TMDL revision and Chloride SSOs	APPROVAL
Strategic Growth Council	2010-0210-01	FP	Conflict-of Interest Code	FILE_PRINT_ONLY

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010-0210-05  
AIR RESOURCES BOARD  
School Bus Idling and Idling at Schools

The California Air Resources Board submitted this action as one without regulatory effect, pursuant to title 1, California Code of Regulations, section 100, to amend the penalty provisions in title 13, California Code of Regulations, sec. 2480 for consistency with legislation enacted by Stats.2009, c. 561 (SB 124).

Title 13  
California Code of Regulations  
AMEND: 2480  
Filed 03/25/2010  
Agency Contact:  
Trini Balcazar (916) 445-9564

File# 2010-0218-03  
BOARD OF EQUALIZATION  
Specified Special Tax and Fees Regulations

This action makes several changes without regulatory effect to update existing regulations to make them

consistent with statutory changes. These changes include authority and reference citations, definitions and other non-substantive changes.

Title 18  
California Code of Regulations  
ADOPT: 3500 AMEND: 2300, 2401, 3502, 4041, 4500, 4508, 4701, 4702, 4703, 4901  
Filed 03/30/2010  
Agency Contact:  
Richard Bennion (916) 445-2130

File# 2010-0212-01  
CALIFORNIA HORSE RACING BOARD  
Equipment Requirement

This rulemaking action defines the parameters of allowable whips used in flat racing on California race-tracks.

Title 4  
California Code of Regulations  
AMEND: 1685  
Filed 03/29/2010  
Effective 04/28/2010  
Agency Contact: Harold Coburn (916) 263-6397

File# 2010-0212-02  
CALIFORNIA HORSE RACING BOARD  
Jockey's Riding Fees

This regulatory action increases the minimum jockey riding fee for a losing mount by \$10 and increases the minimum amount awarded to a jockey who finishes in second or third place in a race with a gross purse of \$9,999 or less by \$10. The increases are mandated by Business and Professions Code section 19501(b)(1) and (b)(2). In addition, this action eliminates minimum jockey fees for gross purse categories in the \$599 to \$1499 range.



# **Specified Special Tax and Fees Regulations**

## **Section 100**

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2. *Statement of Explanation Regulation 2300*
3. *Statement of Explanation Regulation 2401*
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11. *Senate Bill 1049*
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## NOTICE PUBLICATION REGULATION

SUBMISSION

(See instructions on page 18)

ions on 18)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2010-0218-03N	

For use by Office of Administrative Law (OAL) only

NOTICE

2010 FEB 18 PM 12:50

OFFICE OF  
ADMINISTRATIVE LAW

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

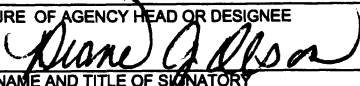
**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Specified Special Tax and Fees Regulations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 3500	
		AMEND 2300, 2401, 3502, 4041, 4500, 4508, 4701, 4702, 4703, 4901	
		REPEAL	
TITLE(S) 18			
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE February 18, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 2300. Collection of Surcharge.**

Every electric utility making sales of electrical energy to consumers in this state shall collect the surcharge from each consumer other than a consumer that is an electric utility or is exempt under Chapter 3, of Part 19 of Division 2 of the Revenue and Taxation Code, at the time it collects its billing from the consumer for the electrical energy sold. A consumer is any person receiving electrical energy furnished by an electric utility and includes a person receiving electrical energy for redistribution for the use of his tenants.

Second Paragraph . . . (unchanged).

Third Paragraph . . . (unchanged).

Fourth Paragraph . . . (unchanged).

Fifth Paragraph . . . (unchanged).

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections ~~40001-40191~~40019, 40019.1, 40020, and 40045, Revenue and Taxation Code.

## Text of Proposed Changes to

### Title 18. Public Revenue

Regulation 2401. Definitions.

(a) Service Supplier.

(1) "Service Supplier" means ~~any person supplying intrastate telephone communication services to any service user in this state, provided however:~~both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(2) Notwithstanding paragraph (1):

(A1) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B2) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either:

(1) A telephonic quality communication for which there is a toll charge for the service which varies in amount with the distance and elapsed transmission time that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication; as well as or

(2) Aa service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, and 41021, Revenue and Taxation Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 3500. Application of the Fee Collection Procedures Law.**

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code, Section 44003, Revenue and Taxation Code; Section 1537, Water Code.

#### **Regulation 3502. Relief from Liability.**

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Fee Collection Procedures Law, Part 30, (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on written advice given by the board described in California Code of Regulations, Title 18, Section 4902.

~~The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Ballast Water Management Fee, and Natural Gas Surcharge.~~

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Section 55045, Revenue and Taxation Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 4041. Common Carrier Delivery Reports.**

Every common carrier making a delivery of cigarettes to a consignee in this State, the shipment of which originated outside this State, shall report to the board not later than the 25th day of the calendar month following the calendar month in which the delivery of the cigarettes or tobacco products was made, the following information concerning the shipment:

(a) . . . (Unchanged);

(b) . . . (Unchanged);

(c) . . . (Unchanged);

(d) the number of cases, bales or other containers of cigarettes delivered, ~~and the quantity of cigarettes contained therein, and the quantity of tobacco products delivered,~~ as shown by the shipping documents; and

(e) . . . (Unchanged); and

(f) . . . (Unchanged).

This report shall be made on a form prescribed by the Board, which may include, but not be limited to, electronic media, and filed with the Bboard at Sacramento.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30186 and 30454, Revenue and Taxation Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 4500. Definitions.**

In addition to the definitions in Business and Professions Code section 22971, the following definitions shall apply to this chapter:

- (a) . . . (unchanged).
- (b) . . . (unchanged).
- (c) . . . (unchanged).
- (d) . . . (unchanged).
- (e) “Board” means the Board Members of the State Board of Equalization meeting as a body or the agency created by article XIII, section 917, of the California Constitution, as the context indicates.
- (f) . . . (unchanged).
- (g) . . . (unchanged).
- (h) . . . (unchanged).
- (i) . . . (unchanged).
- (j) . . . (unchanged).
- (k) . . . (unchanged).
- (l) . . . (unchanged).
- (m) . . . (unchanged).
- (n) . . . (unchanged).
- (o) . . . (unchanged).
- (p) . . . (unchanged).
- (q) . . . (unchanged).
- (r) . . . (unchanged).
- (s) . . . (unchanged).
- (t) . . . (unchanged).
- (u) . . . (unchanged).
- (v) . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22970, 22971, 22974.5, 22978.7 and 22979.7, Business and Professions Code; and Section 22971(n)30010, Revenue and Taxation Code.



## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

Regulation 4508. Appeal - Denial of License.

(a) . . . (Unchanged).

(b) . . . (Unchanged).

(c) The Board shall reconsider the determination of the Excise Taxes Division pursuant to its administrative appeals process set forth in Regulation 5023 article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087 Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.

(d) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the applicant, except as provided in Regulation 5560, subdivision (b) ~~Regulation 5082~~.

(e) . . . (Unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

Regulation 4701. Appeal - Appeals Division.

(a) . . . (Unchanged).

(b) Conference. Upon receipt of a Request for Appeals Conference, a conference will be scheduled and held as set forth in ~~Regulation 5023~~article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations, unless otherwise provided herein. The conference shall allow a licensee or unlicensed person an opportunity to show cause why the Warning Notice, Notice of Violation, or Notice of First Decision, and the penalty or penalties imposed therein, should not be upheld.

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(c) Decision. The Appeals Division shall issue a Notice of Second Decision following the conference. The Notice of Second Decision will set forth the Appeals Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights, if any, as set forth in subdivisions (e) and (f) below.

(d) . . . (Unchanged).

(e) . . . (Unchanged).

(f) . . . (Unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

Regulation 4702. Appeal - Board Hearing.

(a) . . . (Unchanged).

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(4) . . . (Unchanged).

(b) When applicable, upon receipt of the Request for Board Hearing, a Board hearing shall be scheduled and conducted in accordance with the procedures as set forth in ~~Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087~~ Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576, to allow the licensee or unlicensed person an opportunity to show cause why the Notice of Violation or Notice of Second Decision, and the penalty or penalties imposed therein, should not be upheld. Following the Board hearing, a Notice of Board Decision will be mailed to the licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

**Text of Proposed Changes to**  
**Title 18. Public Revenue**

**Regulation 4703. Seizures and Forfeitures.**

(a) . . . (Unchanged).

**(b) Seizure of Untaxed Products.**

(1) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(C) . . . (Unchanged).

(D) . . . (Unchanged).

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized by the ~~Investigations Division~~Board or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(c) Seizure of Product From Persons Without a Valid License. The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid, when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

(1) Unlicensed Persons.

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(2) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(3) Forfeiture. Any cigarettes and tobacco products seized by the ~~board~~Board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

(4) . . . (Unchanged).

(d) Evidence ~~Required For~~Relevant to Recovery of Product. Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(4) . . . (Unchanged).

(5) . . . (Unchanged).

(6) . . . (Unchanged).

(7) . . . (Unchanged).

(8) . . . (Unchanged).

(e) . . . (Unchanged).

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(f) . . . (Unchanged).

**Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22971(l) and (m), 22974.3(a) and (b), 22978.2(a) and (b) and 22980.2(c), Business and Professions Code; and Sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Revenue and Taxation Code.**

## **Text of Proposed Changes to**

### **Title 18. Public Revenue**

#### **Regulation 4901. Records.**

##### **(a) Definitions.**

**(1) "Applicable Tax Laws" means any of the following:**

**(A) . . . (unchanged);**

**(B) . . . (unchanged);**

**(C) ~~Ballast Water Management Fee~~Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;**

**(D) . . . (unchanged);**

**(E) . . . (unchanged);**

**(F) . . . (unchanged);**

**(G) . . . (unchanged);**

**(H) . . . (unchanged);**

**(I) . . . (unchanged);**

**(J) . . . (unchanged);**

**(K) . . . (unchanged);**

**(L) . . . (unchanged);**

**(M) . . . (unchanged);**

**(N) . . . (unchanged);**

**(O) . . . (unchanged);**

**(P) . . . (unchanged);**

**(Q) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;**

(R) Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;

(S) Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged.)

(6) . . . (unchanged).

(7) . . . (unchanged).

(b) General. . . . (unchanged).

(c) Machine-Sensible Records. . . . (unchanged).

(d) Machine-Sensible Records Maintenance Requirements. . . . (unchanged).

(e) Access to Machine-Sensible Records. . . . (unchanged).

(f) Taxpayer Responsibility and Discretionary Authority. . . . (unchanged).

(g) Hardcopy Records. . . . (unchanged).

(h) Alternative Storage Media. . . . (unchanged).

(i) Record Retention – Time Period. . . . (unchanged).

(j) Record Retention Limitation Agreements. . . . (unchanged).

(k) Failure to Maintain Records. . . . (unchanged).

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605 and 60606, Revenue and Taxation Code.



# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 2300, *Collection of Surcharge*

#### **A. Factual Basis**

California Code of Regulations, title 18, section (Regulation) 2300 generally provides the criteria and procedures for collection of the energy resources surcharge under the Energy Resources Surcharge Law (part 19 (commencing with section 40001) of division 2 of the Revenue and Taxation Code). The State Board of Equalization (Board) hereby proposes to complete a textual reference to the Energy Resources Surcharge Law and to provide more specific statutory references in the reference note for Regulation 2300 under California Code of Regulations, title 1, section (Rule) 100.

The reference in the first paragraph of Regulation 2300 to the Energy Resources Surcharge Law, “Chapter 3, Part 19 of the Revenue and Taxation Code”, is incomplete because it does not contain a reference to division 2. In addition, the reference note for Regulation 2300 cites the entire Energy Resources Surcharge Law, rather than the specific Revenue and Taxation Code sections being implemented, interpreted, or made specific by Regulation 2300. Accordingly, the Board proposes to amend Regulation 2300 to correct the citation in the text of the regulation and to provide more specific references for the regulation.

#### **B. Proposed Amendment**

##### Rule 100 Changes to Regulation 2300, *Collection of Surcharge*

Rule 100 changes are proposed to Regulation 2300 to: amend “Chapter 3, Part 19” in the first paragraph to read “Chapter 3 of Part 19 of Division 2”; and replace sections “40001-40191” with sections “40019, 40019.1, 40020, and 40045” in the reference note.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to provide a complete citation to the Energy Resources Surcharge Law in the text of Regulation 2300 and provide citations to the Revenue and Taxation Code sections being implemented, interpreted, or made specific in the reference note for Regulation 2300.

## PROPOSED AMENDMENT

Amend Regulation 2300 (Collection of Surcharge) to read as follows:

Regulation 2300. Collection of Surcharge.

Every electric utility making sales of electrical energy to consumers in this state shall collect the surcharge from each consumer other than a consumer that is an electric utility or is exempt under Chapter 3, of Part 19 of Division 2 of the Revenue and Taxation Code, at the time it collects its billing from the consumer for the electrical energy sold. A consumer is any person receiving electrical energy furnished by an electric utility and includes a person receiving electrical energy for redistribution for the use of his tenants.

Second Paragraph . . . (unchanged).

Third Paragraph . . . (unchanged).

Fourth Paragraph . . . (unchanged).

Fifth Paragraph . . . (unchanged).

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections ~~40001-40191~~40019, 40019.1, 40020, and 40045, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 2401, *Definitions*

#### **A. Factual Basis**

California Code of Regulations, title 18, section (Regulation) 2401 generally provides definitions that apply to chapter 5.5 (commencing with Regulation 2401) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Emergency Telephone Users Surcharge Law (part 20 (commencing with section 41001) of division 2 of the Revenue and Taxation Code. The State Board of Equalization (Board) hereby proposes to update certain definitions contained in Regulation 2401 to make them consistent with changes to their statutory definitions, pursuant to California Code of Regulations, title 1, section (Rule) 100.

Statutes 2008, chapter 17 (Sen. Bill No. 1040), effective May 21, 2008, revised several provisions of the Emergency Telephone Users Surcharge Law, including Revenue and Taxation Code sections 41007 and 41016, which define the terms “service supplier” and “toll telephone service,” respectively. Accordingly, the Board proposes to amend the definition of “service supplier” and the relevant portion of the definition of “intrastate telephone communication services” in subdivisions (a) and (b) of Regulation 2401 to bring the definitions in subdivisions (a) and (b) into conformity with the revised statutory definitions in Revenue and Taxation Code sections 41007 and 41016., respectively. The Board also proposes to add citations to Revenue and Taxation Code sections 41015 and 41016, which define “local telephone service” and “toll telephone service,” respectively, to the reference note for Regulation 2401.

#### **B. Proposed Amendments**

##### Rule 100 Changes to Regulation 2401, *Definitions*

Rule 100 changes are proposed to Regulation 2401, subdivision (a), to

- Create a new subdivision (a)(1) and renumber current subdivision (a)(1) and (2) as subdivision (a)(2)(A) and (B), respectively;
- Delete “any person supplying intrastate telephone communication services to any service user in this state, provided however:” in new subdivision (a)(1);
- Replace the deleted language with “both of the following: (A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1; and (B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1.” in new subdivision (a)(1); and
- Add “Notwithstanding paragraph (1):” to the beginning of new subdivision (a)(2).

Rule 100 changes are proposed to Regulation 2401, subdivision (b), to:

- Add “either a” between “includes” and “telephonic”;
- Add “for the service” after “a toll charge”;
- Replace “which varies in amount with the distance and elapsed transmission time” with “that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time,”;
- Replace “as well as” with “or”;
- Add a space between “transmission time),” and “to the privilege of”; and
- Add “a predetermined amount of units or dollars of telephonic communications or” after “the privilege of”.

In addition, Rule 100 changes are proposed to add citations to Revenue and Taxation Code sections 41015 and 41016 to the reference note for Regulation 2401.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Further, these changes are necessary and appropriate for processing under Rule 100 because they bring the regulation into conformity with statutory provisions that have been amended since the regulation was promulgated and the Board has no discretion to adopt definitions that are inconsistent with those provisions. Furthermore, these changes are necessary to correct punctuation and provide accurate citations to the references for Regulation 2401.

## PROPOSED AMENDMENTS

Amend Regulation 2401 (Definitions) to read as follows:

### **Regulation 2401. Definitions.**

#### (a) Service Supplier.

(1) “Service Supplier” means ~~any person supplying intrastate telephone communication services to any service user in this state, provided however:~~both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1.

#### (2) Notwithstanding paragraph (1):

(A1) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the “service supplier” means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B2) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. “Intrastate telephone communication services” means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either a telephonic quality communication for which there is a toll charge for the service which varies in amount with the distance and elapsed transmission time that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication as well as or a service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, and 41021, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue

#### Regulation 3500, *Application of the Fee Collection Procedures Law* Regulation 3502, *Relief from Liability*

#### **A. Factual Basis**

Chapter 8.5 of division 2 of title 18 of the California Code of Regulations contains regulations that implement, interpret, or make specific provisions of the Fee Collection Procedures Law (part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code). California Code of Regulations, title 18, section (Regulation) 3502 is contained in chapter 8.5. Regulation 3502 generally provides information about and a cross reference to criteria for seeking relief from liability for taxes or fees, interest, and penalties under the Fee Collection Procedures Law.

The second paragraph in Regulation 3502 lists the specific taxes and fees collected under the Fee Collection Procedures Law, but the other regulations in chapter 8.5 (Regulations 3501 and 3503) do not list the specific taxes and fees collected under the Fee Collection Procedures Law. Furthermore, the second paragraph of Regulation 3502 currently lists three taxes and fees that are collected pursuant to the Fee Collection Procedures Law: “the California Tire Fee, the Ballast Water Management Fee, and the Natural Gas Surcharge.” However, the list is not up to date because there are presently five taxes and fees that are collected pursuant to the Fee Collection Procedures Law, and the name of one of the fees currently listed – the Ballast Water Management Fee – has been changed to the “Marine Invasive Species Fee.”<sup>1</sup> Accordingly, the State Board of Equalization (Board) hereby proposes to add a new regulation at the beginning of chapter 8.5, move the list in the second paragraph of Regulation 3502 into the new regulation, and update the list to reflect the specific taxes and fees currently collected under the Fee Collection Procedures Law under California Code of Regulations, title 1, section (Rule) 100. The new regulation will clarify that all of the regulations in chapter 8.5 (Regulations 3501, 3502, and 3503) apply to all of the taxes and fees collected under the Fee Collection Procedures Law.

#### **B. Proposed Amendments**

##### Rule 100 Changes to Add Regulation 3500 and Amend Regulation 3502

Rule 100 changes are proposed to:

- Add California Code of Regulations, title 18, section 3500, *Application of the Fee Collection Procedures Law*;

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<sup>1</sup> Statutes 2003, chapter 491 (Assem. Bill No. 433 (2003-2004 Reg. Sess.)), section 28, substituted “Marine Invasive Species Fee Collection Law” for “Ballast Water Management Fee Law” in Revenue and Taxation Code section 44000, effective January 1, 2004.

- Move the second paragraph of Regulation 3502, which lists the taxes and fees collected pursuant to the Fee Collection Procedures Law, into Regulation 3500; and
- Update the list of taxes and fees in Regulation 3500 so that it includes the California Tire Fee, Covered Electronic Waste Recycling Fee,<sup>2</sup> Marine Invasive Species Fee, Natural Gas Surcharge, and Water Rights Fee,<sup>3</sup> which are the taxes and fees currently collected pursuant to the Fee Collection Procedures Law.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to update the list of taxes and fees collected pursuant to the Fee Collection Procedures Law and clarify that all of the regulations in chapter 8.5 (Regulations 3501, 3502, and 3503) of division 2 of the California Code of Regulations apply to all of the taxes and fees collected under the Fee Collection Procedures Law.

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<sup>2</sup> Public Resources Code section 42464.2, added by Statutes 2004, chapter 863 (Sen. Bill No. 50 (2003-2004 Reg. Sess.), section 7, provides that “The State Board of Equalization shall collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).”

<sup>3</sup> Water Code section 1537, added by Statutes 2003, chapter 741 (Sen. Bill 1049 (2003-2004 Reg. Sess.), section 85, provides that “The State Board of Equalization shall collect the [water rights] fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).”



## PROPOSED TEXT OF AMENDMENTS

Add Regulation 3500 to read as follows:

Regulation 3500. Application of the Fee Collection Procedures Law.

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code, Section 44003, Revenue and Taxation Code; Section 1537, Water Code.

Amend Regulation 3502 (Relief from Liability) to read as follows:

Regulation 3502. Relief from Liability.

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Fee Collection Procedures Law, Part 30, (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on written advice given by the board described in California Code of Regulations, Title 18, Section 4902.

~~The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Ballast Water Management Fee, and Natural Gas Surcharge.~~

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Section 55045, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue

#### Regulation 4041, *Common Carrier Delivery Reports*

##### **A. Factual Basis**

California Code of Regulations, title 18, section (Regulation) 4041, pertaining to the Cigarette and Tobacco Products Tax, generally prescribes the reporting requirements for common carriers that deliver cigarettes shipped from outside this state to consignees in this state under the Cigarette and Tobacco Products Tax Law (part 13 (commencing with section 30001) of division 2 of the Revenue and Taxation Code). The State Board of Equalization (Board) hereby proposes to amend Regulation 4041 under California Code of Regulations, title 1, section (Rule) 100 to make the regulation consistent with common carriers' current statutory reporting requirements.

Regulation 4041 was initially adopted in 1958 to prescribe common carriers' reporting requirements under Revenue and Taxation Code section (section) 30454 in the Cigarette Tax Law and the last time it was amended was in 1968. In 1989, the Legislature revised "the Cigarette Tax Law to conform to the adoption of the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), by renaming that law the Cigarette and Tobacco Products Tax Law and by providing that reporting and tax collection requirements applicable to distributors of cigarettes shall also apply to distributors of tobacco products." (Digest for Stats. 1989, ch. 634.) As part of these revisions, section 30454 was amended to allow the Board to require the same reports from common carriers that deliver tobacco products shipped from outside this state to consignees in this state as are required from common carriers that deliver cigarettes. (Stats. 1989, ch. 634, § 40.) The Board now proposes to amend Regulation 4041 to make it consistent with section 30454.

Further, Revenue and Taxation Code section 30186, pertaining to reports of sales by common carriers, was amended effective January 1, 2003, to add a provision that the reports should be "in the form as prescribed by the board, which may include, but not be limited to, electronic media." (Stats. 2002, ch. 459, § 10.) The Board proposes to add similar language regarding electronic media to the existing language in the last paragraph of Regulation 4041 to make it consistent with section 30186.

In addition, the Board proposes to add authority and reference notes to Regulation 4041 containing citations to Revenue and Taxation Code section 30451, the "authority," and sections 30186 and 30454, the "references," for Regulation 4041.

## **B. Proposed Amendments**

### Rule 100 Changes to Regulation 4041, *Common Carrier Delivery Reports*

Rule 100 changes are proposed to Regulation 4041 to:

- Add a comma after “State” and add “or tobacco products” after “delivery of the cigarettes” in the first part of the regulation;
- Add a comma after “cigarettes delivered”, delete “and” before “the quantity of cigarettes”, and add “, and the quantity of tobacco products delivered,” after “contained therein” in subdivision (d) of the regulation; and
- Add “the board, which may include, but not be limited to, electronic media,” after “prescribed by” in the last sentence of the regulation.

Rule 100 changes are also proposed to add authority and reference notes containing citations to Revenue and Taxation Code section 30451, the authority, and sections 30186 and 30454, the references, for Regulation 4041.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Further, these changes are appropriate for processing under Rule 100 because they bring the regulation into conformity with statutory provisions that were revised since the regulation was last amended. Furthermore, the changes are necessary to provide current citations to the authority and references for Regulation 4041.

## PROPOSED AMENDMENTS

Amend Regulation 4041 (Common Carrier Delivery Reports) to read as follows:

### **Regulation 4041. Common Carrier Delivery Reports.**

Every common carrier making a delivery of cigarettes to a consignee in this State, the shipment of which originated outside this State, shall report to the board not later than the 25th day of the calendar month following the calendar month in which the delivery of the cigarettes or tobacco products was made, the following information concerning the shipment:

- (a) . . . (Unchanged);
- (b) . . . (Unchanged);
- (c) . . . (Unchanged);
- (d) the number of cases, bales or other containers of cigarettes delivered, ~~and the quantity of cigarettes contained therein, and the quantity of tobacco products delivered,~~ as shown by the shipping documents; and
- (e) . . . (Unchanged); and
- (f) . . . (Unchanged).

This report shall be made on a form prescribed by the board, which may include, but not be limited to, electronic media, and filed with the board at Sacramento.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30186 and 30454, Revenue and Taxation Code.

# CHANGE WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 4500, *Definitions*

#### **A. Factual Basis**

California Code of Regulations, title 18, section (Regulation) 4500 generally provides the definitions that apply to chapter 9<sup>1</sup> (commencing with Regulation 4500) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). The State Board of Equalization (Board) hereby proposes to correct a reference to the section of the California Constitution creating the Board and correct a citation in the reference note for Regulation 4500, under California Code of Regulations, title 1, section (Rule) 100.

Article XIII, section 17 of the California Constitution provides for the establishment of the Board, prescribes its membership, and limits the terms of its members and has not been amended since November 7, 1990. In Regulation 4500, subdivision (e), the definition for the term “Board” provides that the term Board “means the Board Members of the State Board of Equalization meeting as a body or the agency created by article XIII, section 9, of the California Constitution” and incorrectly refers to article XIII, section 9, instead of article XIII, section 17 of the California Constitution. Therefore, the Board proposes to amend Regulation 4500, subdivision (e), to correctly refer to article XIII, section “17” of the California Constitution.

Revenue and Taxation Code section 30010 defines the term “person” for purposes of the Cigarette and Tobacco Products Tax Law and Business and Professions Code section 22971, subdivision (n), provides that for purposes of the Cigarette and Tobacco Products Licensing Act the term “person” also means “a person as defined in Section 30010 of the Revenue and Taxation Code.” Regulation 4500, subdivision (s), implements, interprets, and makes specific both statutes defining the term “person” and provides that the term “person” means “a person as defined in Revenue and Taxation Code section 30010.” The reference note for Regulation 4500 correctly cites to Business and Professions Code section 22971. However, the reference note for Regulation 4500 does not cite to Revenue and Taxation Code section 30010. Instead, the reference note contains a typographical error that inadvertently combines citations to “Section 22971,” Business and Professions Code, and Section 30010, “Revenue and Taxation Code,” and cites “Section 22971(n), Revenue and Taxation Code,” which does not exist. Accordingly, the Board proposes to amend the reference note for Regulation 4500 to delete the incorrect citation to “Section 22971(n),” Revenue and Taxation Code, and replace it with a correct citation to “Section 30010,” Revenue and Taxation Code, which is in fact the correct citation to the statute defining the term “person” for purposes of the Cigarette and Tobacco Products Licensing Act.

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<sup>1</sup> New chapter 9.5 (articles 1-6, Regs. 4500-4703) filed March 22, 2007; operative April 21, 2007 (Register 2007, No. 12).

## **B. Proposed Amendment**

### Rule 100 Change to Regulation 4500, *Definitions*

Rule 100 changes are proposed to replace the number “9” with the number “17” in Regulation 4500, subdivision (e), and replace the citation to “Section 22971(n), Revenue and Taxation Code” with a citation to “Section 30010, Revenue and Taxation Code” in the reference note for Regulation 4500.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to correct a reference to the California Constitution in and provide the correct citation to one of the statutory references for Regulation 4500.

## PROPOSED AMENDMENT

Amend Regulation 4500 (Definitions) to read as follows:

### **Regulation 4500. Definitions.**

In addition to the definitions in Business and Professions Code section 22971, the following definitions shall apply to this chapter:

- (a) . . . (unchanged).
- (b) . . . (unchanged).
- (c) . . . (unchanged).
- (d) . . . (unchanged).
- (e) "Board" means the Board Members of the State Board of Equalization meeting as a body or the agency created by article XIII, section 917, of the California Constitution, as the context indicates.
- (f) . . . (unchanged).
- (g) . . . (unchanged).
- (h) . . . (unchanged).
- (i) . . . (unchanged).
- (j) . . . (unchanged).
- (k) . . . (unchanged).
- (l) . . . (unchanged).
- (m) . . . (unchanged).
- (n) . . . (unchanged).
- (o) . . . (unchanged).
- (p) . . . (unchanged).
- (q) . . . (unchanged).
- (r) . . . (unchanged).
- (s) . . . (unchanged).
- (t) . . . (unchanged).
- (u) . . . (unchanged).
- (v) . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22970, 22971, 22974.5, 22978.7 and 22979.7, Business and Professions Code; and Section ~~22971(n)~~30010, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 4901, *Records*

#### A. Factual Basis

Chapter 9.9, Special Taxes Administration – Miscellaneous, of division 2 of title 18 of the California Code of Regulations contains regulations that implement, interpret, or make specific provisions of the Revenue and Taxation Code that are common to a number of Board administered special taxes and fees. California Code of Regulations, title 18, section (Regulation) 4901 is contained in chapter 9.9. Regulation 4901 generally prescribes the records taxpayers and fee payers must maintain and make available to the State Board of Equalization (Board) for inspection under provisions of specified special taxes and fees, which the regulation refers to as “Applicable Tax Laws.”

Regulation 4901, subdivision (a)(1), contains the definition of “Applicable Tax Laws,” and lists the specific special taxes and fees that are included in the definition. Regulation 4901, subdivision (a)(1)(C), (D), and (M) refer to the Ballast Water Management Fee, California Tire Fee, Natural Gas Surcharge as applicable tax laws, respectively. This is because:

- The Board administers all three of the fees under the Fee Collection Procedures Law (Rev. & Tax. Code, § 55001 et seq.);
- Revenue and Taxation Code section 55301 authorizes the Board to prescribe, adopt, and enforce rules and regulations that implement, interpret, and make specific the provisions of the Fee Collection Procedures Law;
- Revenue and Taxation Code section 55302 authorizes the Board to examine fee payers’ books and records as necessary to carry out the provisions of the Fee Collection Procedures Law; and
- Regulation 4901 prescribes the records fee payers must maintain and make available to the Board for inspection under Revenue and Taxation Code section 55302.

Since Regulation 4901 was adopted in 2003, two new special fees have been enacted – the Water Rights Fee (Wat. Code, § 1525 et seq.) and the Covered Electronic Waste Recycling Fee (Pub. Resources Code, § 42464 et seq.), effective January 1, 2004. The Board administers both of these fees under the provisions of the Fee Collection Procedures Law, including Revenue and Taxation Code section 55302.<sup>1</sup> Accordingly, the Board hereby proposes to add the Water Rights

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<sup>1</sup> Water Code section 1537, added by Statutes 2003, chapter 741 (Sen. Bill 1049 (2003-2004 Reg. Sess.), section 85, provides that “The State Board of Equalization shall collect the [water rights] fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).” Public Resources Code section 42464.2, added by Statutes 2004, chapter 863 (Sen. Bill No. 50 (2003-2004 Reg. Sess.), section 7, provides that “The State Board of Equalization shall collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).”



Fee and the Covered Electronic Waste Recycling Fee to the list of “Applicable Tax Laws” in Regulation 4901, subdivision (a)(1), to clarify that Regulation 4901 also applies to these two special fees.

In addition, the Ballast Water Management Fee was renamed the Marine Invasive Species Fee effective January 1, 2004.<sup>2</sup> Therefore, the Board also proposes to replace “Ballast Water Management Fee” with “Marine Invasive Species Fee” in Regulation 4901, subdivision (a)(1)(C).

## **B. Proposed Amendments**

### Rule 100 Changes to Amend Regulation 4901, *Records*

Rule 100 changes are proposed to add a semicolon after Regulation 4901, subdivision (a)(1)(Q), add the Covered Electronic Waste Recycling Fee and Water Rights Fee to Regulation 4901, subdivision (a)(1)(R) and (S), respectively, and to replace “Ballast Water Management Fee” with “Marine Invasive Species Fee” in Regulation 4901, subdivision (a)(1)(C) so that the list of special taxes and fees to which Regulation 4901 applies is current.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to update the list of taxes and fees to which Regulation 4901 applies.

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<sup>2</sup> Statutes 2003, chapter 491 (Assem. Bill No. 433 (2003-2004 Reg. Sess.)), section 28, substituted “Marine Invasive Species Fee Collection Law” for “Ballast Water Management Fee Law” in Revenue and Taxation Code section 44000, effective January 1, 2004.

## PROPOSED AMENDMENTS

Amend Regulation 4901 (Records) to read as follows:

### **Regulation 4901. Records.**

(a) Definitions.

(1) "Applicable Tax Laws" means any of the following:

(A) . . . (unchanged);

(B) . . . (unchanged);

(C) ~~Ballast Water Management Fee~~ Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;

(D) . . . (unchanged);

(E) . . . (unchanged);

(F) . . . (unchanged);

(G) . . . (unchanged);

(H) . . . (unchanged);

(I) . . . (unchanged);

(J) . . . (unchanged);

(K) . . . (unchanged);

(L) . . . (unchanged);

(M) . . . (unchanged);

(N) . . . (unchanged);

(O) . . . (unchanged);

(P) . . . (unchanged);

(Q) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;

(R) Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;

(S) Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.

- (2) . . . (unchanged).
- (3) . . . (unchanged).
- (4) . . . (unchanged).
- (5) . . . (unchanged.)
- (6) . . . (unchanged).
- (7) . . . (unchanged).
- (b) General. . . . (unchanged).
- (c) Machine-Sensible Records. . . . (unchanged).
- (d) Machine-Sensible Records Maintenance Requirements. . . . (unchanged).
- (e) Access to Machine-Sensible Records. . . . (unchanged).
- (f) Taxpayer Responsibility and Discretionary Authority. . . . (unchanged).
- (g) Hardcopy Records. . . . (unchanged).
- (h) Alternative Storage Media. . . . (unchanged).
- (i) Record Retention – Time Period. . . . (unchanged).
- (j) Record Retention Limitation Agreements. . . . (unchanged).
- (k) Failure to Maintain Records. . . . (unchanged).

Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605 and 60606, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue

Regulation 4508, *Appeal – Denial of License*  
Regulation 4701, *Appeal – Appeals Division*  
Regulation 4702, *Appeal – Board Hearing*

#### **A. Factual Basis**

California Code of Regulations, title 18, sections (Regulations) 4508, 4701, and 4702 contain procedures applicable to appeals of the State Board of Equalization's (Board) decisions to deny licenses to sell cigarette and tobacco products or issue Warning Notices and Notices of Violation, under the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). These regulations were adopted on December 12, 2006, and effective April 21, 2007, and therefore cross reference the Board's general procedures for conducting appeals conferences and Board hearings under the Board's Rules of Practice<sup>1</sup> (Cal. Code Regs., tit. 18, § 5010 et seq.), which were effective until February 6, 2008, when they were repealed and replaced with the Board's Rules for Tax Appeals (division 2.1 (commencing with section 5000) of title 18 of the California Code of Regulations). For example, Regulation 4508 explains that an applicant may file a petition for redetermination to appeal the Board's initial denial of a license to sell cigarette and tobacco products and, when a timely petition is filed, the Board will conduct an appeals conference pursuant to repealed Regulation 5023 and grant the applicant an oral Board hearing conducted in accordance with repealed Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087.

Repealed Regulation 5023 prescribed the Board's procedures for conducting appeals conferences. The other repealed regulations prescribed the Board's procedures for conducting Board hearings, including:

- Definitions (Regulation 5070);
- The quorum requirements (Regulation 5072);
- Representation at hearings and powers of attorney (Regulation 5073);
- The consolidation of appeals for hearings or decisions (Regulation 5074);
- The timeliness of documents (Regulation 5074.5);
- The briefing process (Regulation 5075);
- The requirements for scheduling and noticing hearings (Regulation 5076);
- The time allocated for hearings (Regulation 5077);
- The scope of hearings (Regulation 5078);
- The hearing procedures (Regulation 5079);
- The burden of proof (Regulation 5080);

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<sup>1</sup> The repealed Rules of Practice are available on the Board's Website at [http://www.boe.ca.gov/meetings/pdf/ROP\\_Complete.pdf](http://www.boe.ca.gov/meetings/pdf/ROP_Complete.pdf) for ease of reference.

- The decision and voting procedures (Regulation 5081);
- Notice of the Board's decision (Regulation 5081.2);
- The finality of decisions and petition for rehearing procedures (Regulation 5082);
- Filing fees and charges for transcripts (Regulation 5083);
- Public records of hearings (Regulation 5085);
- The issuance of subpoenas (Regulation 5086); and
- The withdrawal of exhibits (Regulation 5087).

The Board has determined that the regulations from the repealed Rules of Practice correspond with the regulations in the current Rules for Tax Appeals as follows:

<u>Rules of Practice</u>	<u>Rules for Tax Appeals</u>
1. Regulation 5023	Regulations 5260-5268, and 5523.4
2. Regulation 5070	Regulations 5511 and 5512
3. Regulation 5072	Regulation 5550
4. Regulation 5073	Regulations 5523 and 5523.1
5. Regulation 5074	Regulation 5522.4
6. Regulation 5074.5	Regulation 5571
7. Regulation 5075	Regulations 5270 and 5271
8. Regulation 5076	Regulation 5522.6 and 5522.8
9. Regulation 5077	Regulation 5523.5, subdivisions (c) - (e)
10. Regulation 5078	Regulation 5523.5, subdivision (a)
11. Regulation 5079	Regulations 5523.6 and 5523.7
12. Regulation 5080	Regulation 5541
13. Regulation 5081	Regulation 5551
14. Regulation 5081.2	Regulation 5560, subdivision (a)
15. Regulation 5082	Regulations 5560, subdivision (b), 5561, 5562, and 5563
16. Regulation 5083	Regulations 5576
17. Regulation 5085	Regulation 5572
18. Regulation 5086	Regulation 5523.5, subdivision (b)
19. Regulation 5087	No corresponding provision.

Accordingly, the Board proposes to replace the references to the regulations from the repealed Rules of Practice in Regulations 4508, 4701, and 4702 with references to the corresponding regulations in the current Rules for Tax Appeals, under California Code of Regulations, title 1, section (Rule) 100. The Board also proposes to edit Regulation 4701, subdivision (c), under Rule 100, so that it correctly explains that a Notice of Second Decision will set forth a person's appeal rights, if any, "as set forth in subdivisions (e) and (f)," which both apply to a Notice of Second Decision issued under subdivision (c).

## **B. Proposed Amendments**

### 1. Rule 100 Changes to Regulation 4508, *Appeal—Denial of License*

Rule 100 changes are proposed to Regulation 4508 to:

- Replace the reference to “Regulation 5023” in subdivision (c) with a reference to “article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations”;
- Replace the references to “Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087” in subdivision (c) with references to “Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576”; and
- Replace the reference to “Regulation 5082” in subdivision (d) with a reference to “Regulation 5560, subdivision (b).”

### 2. Rule 100 Changes to Regulation 4701, *Appeal—Appeals Division*

Rule 100 changes are proposed to Regulation 4701 to:

- Replace the reference to “Regulation 5023” with a reference to “article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations” in subdivision (b); and
- Add “s (e) and” following the word “subdivision” in subdivision (c).

### 3. Rule 100 Changes to Regulation 4702, *Appeal—Board Hearing*

A Rule 100 change is proposed to Regulation 4702, subdivision (b), to replace the references to “Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087” with references to “Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.”

The changes do not alter the requirements for appeals conferences or Board hearings or change the application of Regulation 4701, subdivisions (c), (e), or (f). Therefore, the foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes to Regulations 4508, 4701, and 4702 are necessary to replace the references to the regulations from the repealed Rules of Practice with references to the corresponding regulations in the current Rules for Tax Appeals and ensure that Regulation 4701, subdivision (c), properly refers to both subdivisions (e) and (f).

## PROPOSED AMENDMENT

### 1. Amend Regulation 4508 (Appeal – Denial of License) to read as follows:

Regulation 4508. Appeal - Denial of License.

(a) . . . (Unchanged).

(b) . . . (Unchanged).

(c) The Board shall reconsider the determination of the Excise Taxes Division pursuant to its administrative appeals process set forth in Regulation 5023 article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087 Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.

(d) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the applicant, except as provided in Regulation 5560, subdivision (b) Regulation 5082.

(e) . . . (Unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

### 2. Amend Regulation 4701 (Appeal – Appeals Division) to read as follows:

Regulation 4701. Appeal - Appeals Division.

(a) . . . (Unchanged).

(b) Conference. Upon receipt of a Request for Appeals Conference, a conference will be scheduled and held as set forth in Regulation 5023 article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations, unless otherwise provided herein. The conference shall allow a licensee or unlicensed person an opportunity to show cause why the Warning Notice, Notice of Violation, or Notice of First Decision, and the penalty or penalties imposed therein, should not be upheld.

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(c) Decision. The Appeals Division shall issue a Notice of Second Decision following the conference. The Notice of Second Decision will set forth the Appeals Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights, if any, as set forth in subdivisions (e) and (f) below.

(d) . . . (Unchanged).

(e) . . . (Unchanged).

(f) . . . (Unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

3. Amend Regulation 4702 (Appeal – Board Hearing) to read as follows:

Regulation 4702. Appeal - Board Hearing.

(a) . . . (Unchanged).

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(4) . . . (Unchanged).

(b) When applicable, upon receipt of the Request for Board Hearing, a Board hearing shall be scheduled and conducted in accordance with the procedures as set forth in ~~Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087~~ Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576, to allow the licensee or unlicensed person an opportunity to show cause why the Notice of Violation or Notice of Second Decision, and the penalty or penalties imposed therein, should not be upheld. Following the Board hearing, a Notice of Board Decision will be mailed to the licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.



# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 4703, *Seizures and Forfeitures*

#### **A. Factual Basis**

California Code of Regulations, title 18, section (Regulation) 4703 generally provides the criteria and procedures for seizures and forfeitures of cigarettes and tobacco products under the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). The State Board of Equalization (Board) hereby proposes to make minor corrections to the text and a subdivision heading in Regulation 4703 under California Code of Regulations, title 1, section (Rule) 100.

The term “Board” is used 15 times throughout Regulation 4703 to refer to the State Board of Equalization. The term “Investigations Division” is used one time to refer to the State Board of Equalization, in paragraph (2) of subdivision (b). The term “Investigations Division” is inconsistent with the use of the term “Board” throughout the rest of the regulation and should be replaced with the term “Board” to make the subdivision consistent with the rest of the regulation. In subdivision (c), a comma is needed after “paid” and before “when the owner”, and, in paragraph (3) of subdivision (c), the “b” in “board” should be capitalized to make it consistent with the 14 other references to the “Board.” Lastly, subdivision (d) discusses “evidence that may be relevant to the issue of whether or not . . . cigarettes or tobacco products were erroneously or illegally seized” and the heading for subdivision (d) needs to be revised to reflect the content of subdivision (d). Accordingly, the Board proposes to amend Regulation 4703 to replace the reference to the “Investigations Division,” capitalize the first letter in “board,” correct the punctuation error, and revise the heading of subdivision (d) to be consistent with the content of subdivision (d).

#### **B. Proposed Amendments**

##### Rule 100 Changes to Regulation 4703, *Seizures and Forfeitures*

Rule 100 changes are proposed to Regulation 4703 to:

- Replace the term “Investigations Division” in paragraph (2) of subdivision (b) with “Board”;
- Insert a comma after “paid” in subdivision (c);
- Replace “board” with “Board” in paragraph (3) of subdivision (c); and
- Replace “Evidence Required for Recovery of Product” with “Evidence Relevant to Recovery of Product” as the heading for subdivision (d).

The foregoing changes to Regulation 4703 are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code

of Regulations provision. Furthermore, the changes are necessary to make the references to the Board consistent, correct the heading for subdivision (d) to reflect the content of subdivision (d), and correct a punctuation error.

## PROPOSED AMENDMENTS

Amend Regulation 4703 (Seizures and Forfeitures) to read as follows:

### **Regulation 4703. Seizures and Forfeitures.**

(a) . . . (Unchanged).

(b) Seizure of Untaxed Products.

(1) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(C) . . . (Unchanged).

(D) . . . (Unchanged).

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized by the ~~Investigations Division~~Board or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(c) Seizure of Product From Persons Without a Valid License. The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid, when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

(1) Unlicensed Persons.

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(2) . . . (Unchanged).

(A) . . . (Unchanged).

(B) . . . (Unchanged).

(3) Forfeiture. Any cigarettes and tobacco products seized by the ~~board~~Board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

(4) . . . (Unchanged).

(d) Evidence ~~Required For~~Relevant to Recovery of Product. Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(3) . . . (Unchanged).

(4) . . . (Unchanged).

(5) . . . (Unchanged).

(6) . . . (Unchanged).

(7) . . . (Unchanged).

(8) . . . (Unchanged).

(e) . . . (Unchanged).

(1) . . . (Unchanged).

(2) . . . (Unchanged).

(f) . . . (Unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22971(l) and (m), 22974.3(a) and (b), 22978.2(a) and (b) and 22980.2(c), Business and Professions Code; and Sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Revenue and Taxation Code.

**Senate Bill No. 1040**

**CHAPTER 17**

An act to amend Sections 41007, 41009, 41011, 41016, 41020, 41025, 41030, 41031, 41046, 41050 of, and to add Sections 41016.5, 41019.5, and 41152 to, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 21, 2008. Filed with  
Secretary of State May 21, 2008.]

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 1040, Kehoe. Telecommunications: Emergency Telephone Users Surcharge Act.**

Existing provisions of the Warren-911-Emergency Assistance Act establish the number "911" as the primary emergency telephone number of use in the state. The existing Emergency Telephone Users Surcharge Act ("911" surcharge act) generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service that is imposed at a percentage rate, not less than 0.5% nor more than 0.75% as annually estimated to provide revenues sufficient to fund "911" emergency telephone system costs for the current fiscal year. Surcharge amounts are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the "911" emergency telephone number system. Existing law defines a "service supplier," for purposes of the "911" surcharge act, as meaning a person supplying intrastate telephone communication services, as defined, pursuant to California intrastate tariffs to any service user, as defined, in the state and includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission has eliminated the requirement for filing an intrastate tariff. Existing law also defines a "service user" as meaning any person using intrastate telephone communication services in this state who is required to pay a surcharge under the act.

This bill would expand the definition of a "service supplier," for purposes of the "911" surcharge act, to include any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1. This bill would also expand the definition of a "service user" to include any person using VoIP service in this state who is required to pay a surcharge under the act. This bill would specify that the "911" surcharge act applies to VoIP service, as defined, commencing on January 1, 2009,

but would provide that the surcharge does not apply to customers whose primary place of using the service is outside the state. This bill would also specify that charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method, as specified.

This bill would state that it is not the intent of the Legislature to regulate telephone quality communication utilizing VoIP, as defined, but rather its sole purpose is to ensure that all forms of telephonic quality communication that connect to the "911" emergency system contribute to the State Emergency Telephone Number Account. The bill would also make conforming changes to other provisions of the act to include VoIP service.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 41007 of the Revenue and Taxation Code is amended to read:

41007. (a) "Service supplier" shall mean both of the following:

(1) Any person supplying intrastate telephone communication services to any service user in this state pursuant to California intrastate tariffs and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(2) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(b) On and after January 1, 1988, "service supplier" also includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

SEC. 2. Section 41009 of the Revenue and Taxation Code is amended to read:

41009. "Service user" means any person using intrastate telephone communication services or VoIP service in this state who is required to pay a surcharge under the provisions of this part.

SEC. 3. Section 41011 of the Revenue and Taxation Code is amended to read:

41011. (a) "Charges for services" means all charges billed by a service supplier to a service user for intrastate telephone communications services and shall mean local telephone service and include monthly service flat-rate charges for usage, message unit charges and shall mean toll charges, and include intrastate wide area telephone service charges and also means all charges billed by a service supplier to a service user for VoIP service.

(b) (1) "Charges for services" shall not include any tax imposed by the United States or by any charter city, charges for service paid by inserting coins in a public coin-operated telephone, and shall not apply to amounts billed to nonsubscribers for coin shortages. Where a coin-operated telephone service is furnished for a guarantee or other periodic amount, such amount is subject to the surcharge imposed by this part.

(2) "Charges for services" shall not include charges for intrastate toll calls where bills for such calls originate out of California.

(3) "Charges for services" shall not include charges for any nonrecurring, installation, service connection or one-time charge for service or directory advertising, and shall not include private communication service charges, charges for other than communications service, or any charge made by a hotel or motel for service rendered in placing calls for its guests regardless of how such hotel or motel charge is denominated or characterized by an applicable tariff of the Public Utilities Commission of this state.

(4) "Charges for services" shall not include charges for basic exchange line service for lifeline services.

SEC. 4. Section 41016 of the Revenue and Taxation Code is amended to read:

41016. "Toll telephone service" means either of the following:

(a) A telephonic quality communication that meets both of the following requirements:

(1) There is a toll charge for the service that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication.

(2) The charge is paid within the United States.

(b) A service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

SEC. 5. Section 41016.5 is added to the Revenue and Taxation Code, to read:

41016.5. (a) "VoIP service" means any service that satisfies the requirements set forth in paragraph (1) and (2).

(1) Does all of the following:

(A) Enables real-time, two-way voice communication that originates from and terminates to the user's location using Internet Protocol (IP) or any successor protocol.

(B) Requires a broadband connection from the user's location.

(C) Permits users, generally, to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(2) Does at least one of the following:

(A) Requires Internet protocol-compatible customer premises equipment (CPE).

(B) When necessary, is converted to or from transmission control protocol (TCP)/IP by the service user's service supplier before or after being switched by the public switched telephone network.

(C) Is a service that the Federal Communications Commission (FCC) has affirmatively required to provide 911 or E911 service.

(b) This definition shall only apply to this part.

SEC. 6. Section 41019.5 is added to the Revenue and Taxation Code, to read:

41019.5. (a) It is the intent of the Legislature that telephone quality communication utilizing VoIP shall not be regulated by the enactment of Senate Bill 1040 of the 2007–08 Regular Session. The sole purpose of this act is to ensure that all forms of telephonic quality communications that connect to the “911” emergency system contribute to the State Emergency Telephone Number Account and that this act may not be used by a court or administrative body for any purpose other than to interpret and apply this part.

(b) For purposes of this section only, “VoIP” means any service that:

(1) Enables real-time or two-way voice communication that originates or terminates from the user's location using IP or any successor protocol.

(2) Uses a broadband connection from the user's location, including any service that permits users, generally, to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

SEC. 7. Section 41020 of the Revenue and Taxation Code is amended to read:

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for both of the following:

(1) Intrastate telephone communication service in this state commencing on July 1, 1977.

(2) VoIP service that provides access to the “911” emergency system by utilizing the digits 9-1-1 by any service user in this state commencing on January 1, 2009. The surcharge shall not apply to charges for VoIP service where any point of origin or destination is outside of this state.

(b) (1) Notwithstanding Section 41025, charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:

(A) Books and records kept in the regular course of business.

(B) Traffic or call pattern studies representative of the service supplier's business within California.

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier's contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for



VoIP service on September 1 of each year shall apply for the period of January 1 through December 31, inclusive, of the next succeeding calendar year for purposes of this method. At such time as the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

(2) Any method chosen by a service supplier shall remain in effect for at least one calendar year.

(3) If a service supplier reasonably relies upon books and records kept in the regular course of business or any documentation that satisfies the reasonable and verifiable method, then the service supplier's determination of the portion of the billed amount attributable to services not subject to the surcharge shall be rebuttably presumed to be correct. The service supplier's choice of books and records or other method and surcharge billing practice shall also be rebuttably presumed to be fair and legal business practices.

(4) It is the intent of the Legislature that the provisions of subparagraph (C) shall not be considered to be a precedent for the application of the surcharge or any other tax or fee where a person is required to collect a tax or fee imposed upon another.

(c) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(d) The surcharge shall be paid by the service user as hereinafter provided.

(e) The surcharge imposed shall not apply to either of the following:

(1) In accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252), which is incorporated herein by reference, to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(2) To any charges for VoIP service billed to a customer where those services are provided to a customer whose place of primary use of VoIP service is outside this state.

(f) For purposes of this section:

(1) “Charges for mobile telecommunications services” means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer’s home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) “Customer” means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or with a VoIP service provider for VoIP service, or (B) if the end user of mobile telecommunications services or VoIP service is not the contracting party, the end user of the mobile telecommunications service or VoIP service. This paragraph applies only for the purpose of determining the place of primary use. The term “customer” does not include (A) a reseller of mobile telecommunications service or VoIP communication service, or (B) a serving carrier under an arrangement to serve the mobile customer outside the home service provider’s licensed service area.

(3) “Home service provider” means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) “Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) “Mobile telecommunications service” means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service or VoIP service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) With respect to mobile telecommunications service, within the licensed service area of the home service provider.

(7) (A) “Reseller” means a provider who purchases telecommunications services or VoIP service from another telecommunications service provider or VoIP service and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service or VoIP service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any

municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(10) “VoIP service provider” means that provider of VoIP service with whom the end user customer contracts for the provision of VoIP services for the customer’s own use and not for resale.

(g) The amendments made to this section by the act that added this subdivision shall become operative upon the enactment of that act, except that subdivisions (a) and (b) of this section, as amended, shall become operative on January 1, 2009.

SEC. 8. Section 41025 of the Revenue and Taxation Code is amended to read:

41025. If a bill is rendered to persons using intrastate telephone services or VoIP service, the amount on which the surcharge with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the surcharge, then the amount on which the surcharge with respect to each such group shall be based shall be the sum of all items within that group, and the surcharge on the remaining items not included in any such group shall be based on the charge for each item separately.

SEC. 9. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. The Department of General Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year’s 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Department of General Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

SEC. 10. Section 41031 of the Revenue and Taxation Code is amended to read:

41031. The Department of General Services shall make its determination of such surcharge rate each year no later than October 1 and shall notify the board of the new rate, which shall be fixed by the board to be effective with respect to charges made for intrastate telephone communication services and VoIP service on or after January 1 of the next succeeding calendar year.

SEC. 11. Section 41046 of the Revenue and Taxation Code is amended to read:

41046. There are exempt from the surcharge charges for intrastate telephone communication services and VoIP service which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.

SEC. 12. Section 41050 of the Revenue and Taxation Code is amended to read:

41050. The surcharge imposed by Section 41020 attaches at the time charges for the intrastate telephone communication services and VoIP service are billed by the service supplier to the service user and shall be paid by the service user when paying for such services.

SEC. 13. Section 41152 is added to the Revenue and Taxation Code, to read:

41152. The Legislature finds and declares all of the following:

(a) Access to emergency telephone service has been a longstanding goal of the state.

(b) The Emergency Telephone Users Surcharge Act remains an important means for making emergency telephone service available to every person in this state.

(c) Every reasonable means should be employed by telephone corporations and every provider of telephone quality communication to ensure that every person using their service is informed of and is afforded the opportunity to use emergency telephone service, regardless of the means by which emergency telephone calls are placed.

(d) The furnishing of emergency telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation and every provider of telephone quality communication in a way that is equitable, nondiscriminatory, and competitively neutral.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the financial stability of the Emergency Telephone Users Surcharge Act, it is necessary that this act take effect immediately.

## Senate Bill No. 1049

### CHAPTER 741

An act to amend Sections 1103 and 1103.2 of the Civil Code, to amend Sections 714, 2536, 2540, 3031, 3031.2, 4654, 6596, 6596.1, 7145, 7147, 7149, 7149.05, 7149.2, 7149.8, 7360, 7360.1, 7361, 7363, 7380, 7852, 7881, 7921, 8032, 8033, 8033.2, 8033.5, 8034, 8035, 8036, 13005, 15101, and 15103 of, to amend the heading of Article 4 (commencing with Section 7360) of Chapter 2 of Part 2 of Division 6 of, to add Section 8039 to, and to repeal Sections 7149.1, 7149.15, 7362, 7852.21, 7852.3, and 7921.5 of, the Fish and Game Code, and to amend Sections 11502.5, 11703, 11704, 11707, 11903, 11904, 12021, 12103, 12104, 12105, 12201, 12202, 12252, 12401, 12404, 12818, 12841, 12841.1, and 14152 of, to add Section 12841.2 to, to repeal Sections 11515 and 11516 of, and to repeal and add Section 12812 of, the Food and Agricultural Code, to amend Section 8589.4 of, and to add Section 8589.5 to, the Government Code, to amend Sections 12975.7 and 12975.8 of, and to add and repeal Section 10089.45 of, the Insurance Code, to amend Section 25534 of, to add Section 25806 to, and to add Article 3.5 (commencing with Section 4138) to Chapter 1 of Part 2 of Division 4 of, the Public Resources Code, to amend Sections 1025.5, 1052, 1228.3, 1845, 2850, 5006, 5107, 6307, 6308, 6309, 13160.1, and 79505.5 of, to add Sections 1031, 2865, and 2868 to, to repeal Sections 1228.8 and 6308.5 of, and to repeal and add Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of, the Water Code, and to amend Section 1 of Chapter 240 of the Statutes of 2003 relating to resources, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with  
Secretary of State October 9, 2003.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1049, Committee on Budget and Fiscal Review. Resources.

(1) The California Emergency Services Act requires the Director of the Office of Emergency Services to coordinate the emergency services of all state agencies in connection with a state or local emergency and requires the transferor or a person who is acting as an agent for a transferor of real property that is located within an area of potential flooding shown on an inundation map to disclose that fact to any prospective transferor of the property.

This bill would require local governmental organizations, utilities, or other public or private owner of a dam to submit an inundation map that

delineates potential flood zones that could result in the event of dam failure when the reservoir is at specified capacities and would require the Office of Emergency Services to review the maps to determine whether the maps meet the requirements of these provisions, as specified. The bill would also authorize counties to post a notice identifying the locations of inundation maps.

This bill would also require the office to designate areas within which death or personal injury would, in its determination, result from the partial or total failure of a dam. The bill would authorize the appropriate public safety agencies to adopt emergency procedures, as specified, for the evacuation and control of these areas and would require the office to review and make recommendations concerning the procedures.

(2) Under existing law, the changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services is used as the index to determine an annual rate of increase or decrease in the fees for hunting and fishing licenses, stamps, permits, and tags.

Existing law establishes fees for lifetime sportsman's licenses, guide registration and licenses, hunting licenses, lifetime hunting or sport fishing licenses, wild pig tags, sport fishing ocean enhancement stamps, commercial fishing ocean enhancement validations, sport fishing licenses, abalone report cards, steelhead trout catch report-restoration cards, commercial fishing licenses, commercial boat registrations, and commercial passenger fishing boat licenses.

This bill would establish a new base fee for all of those activities for 2004, and would require those fees to be adjusted annually thereafter according to the index described above.

Existing law establishes a resident sport ocean fishing license upgrade stamp and validation. Existing law establishes a fee for an owner or operator of a vessel with a commercial fishing salmon stamp.

This bill would repeal those provisions.

(3) Existing law sets forth provisions relating to the taking of striped bass in a sport fishery. Those provisions are repealed as of January 1, 2004.

This bill would instead establish provisions relating to sport fishing in the San Francisco bay-delta, including prohibiting a person from sport fishing in the San Francisco bay-delta unless he or she first obtains a bay-delta sport fishing enhancement stamp and affixes that stamp to a valid sport fishing license, except as specified. The bill would set a base fee for that stamp, which fee would be adjusted annually. The bill would provide that fees received for that stamp are to be deposited in a separate account in the Fish and Game Preservation Fund, and would require the Department of Fish and Game to use the funds in that account only for the purposes of the Bay-Delta Sport Fishing Enhancement Program, if



that program is established by the Legislature. Those provisions would be repealed as of January 1, 2009.

Under existing law, violation of the Fish and Game Code is a misdemeanor. By changing the scope of a crime, the bill would impose a state-mandated local program.

(4) Existing law establishes fees for commercial fish business licenses, fish receiver's licenses, marine aquaria receiver's licenses, fisherman's retail licenses, fish processor's licenses, fish wholesaler's licenses, and fish importer's licenses.

This bill would increase the fees for those licenses.

(5) Under existing law, of the money collected from fees for lifetime sportsman's licenses, lifetime hunting licenses, and lifetime sport fishing licenses, \$20 is required to be deposited in the Fish and Game Preservation Fund, and the remaining money into the Lifetime License Trust Account in that fund.

This bill would instead require that \$20 from the initial issuance of those licenses be deposited into the fund, and the remaining money into that account.

Under existing law, the department is required annually to transfer from that account to the fund a certain amount.

This bill would change the amount transferred from the account into the fund.

(6) Existing law imposes a registration and renewal fee on the owner of each aquaculture facility. Existing law imposes a surcharge on that fee if the gross annual sales of aquaculture products exceed a certain amount.

This bill would increase those fees and that surcharge.

(7) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the Department of Fish and Game and the Fish and Game Commission to pay all necessary expenses incurred in carrying out the Fish and Game Code, and to pay the compensation and expenses of the commissioners and employees of the commission. Unless otherwise provided, all money collected under the code is deposited in the fund.

By imposing new duties on the department, and increasing revenues deposited in the fund, the bill would make an appropriation.

(8) Existing law authorizes the Director of Pesticide Regulation to adopt regulations and establish minimum requirements in connection with licenses and certificates pertaining to pesticides. Existing law also specifies various fees for and in connection with various licenses, and certificates, including examinations for the same, renewals, late fees, and other charges in connection thereto.

This bill would instead provide the director with authority to set these fees by regulation, as prescribed. The bill would provide that the fees collected would be deposited in the Department of Pesticide Regulation Fund, and would be available for expenditure by the department, upon appropriation, for the purposes of carrying out various specified pesticide licensing and certification programs. This bill would also make conforming changes to provisions of law in connection with the fees and charges to be set by regulation.

Until July 1, 2004, existing law requires every registrant of a pesticide product to pay the Director of Pesticide Regulation an assessment of 17.5 mills per dollar of sales for all sales by that person of registered pesticides for use in this state. Existing law provides that effective July 1, 2004, and thereafter, the mill assessment rate would be reduced to 9 mills per dollar of sales, for all sales of pesticide for use in this state. Existing law also provides that the director may lower the mill assessment rate, when in addition to other criteria, the director determines that revenues collected would result in a reserve amount greater than \$2.5 million.

This bill would instead provide that from January 1, 2003, through December 31, 2003, the rate would be 17.5 mills. The bill would further provide that for all transactions on or after January 1, 2004, the rate would be set by regulations adopted by the director, but not to exceed 21 mills per dollar of sales. The bill would further provide that if the regulations are not adopted before a payment of the assessment is due, payment would be made at the rate of 17.5 mills and, upon adoption of the regulations, payment of any additional amount would be due and payable. This bill would delete the authority of the director to lower the mill assessment rate, when in addition to other criteria, the director determines that revenues collected would result in a reserve amount greater than \$2.5 million. This bill would provide that the regulations pertaining to the mill assessment rate are deemed emergency regulations, as specified.

Existing law also provides that until July 1, 2004, an additional 3/4 mill assessment may be collected, if necessary, to fund certain duties of the Department of Food and Agriculture, as specified. Existing law also provides for the deposit of these funds and their use, upon appropriation by the Legislature for specified purposes. Existing law provides for the repeal of these provisions on July 1, 2004.

This bill would extend the operation of these provisions indefinitely, by deleting the repeal provisions.

Existing law establishes the Department of Pesticide Regulation and charges it with various duties.





This bill would require the department to create a program to conduct outreach and education for worker safety, environment safety, school safety, and proper pesticide handling and use. The bill would state the intent of the Legislature as to funding from the General Fund in the annual Budget Act or from the Department of Pesticide Regulation for that program.

(9) Under existing law, the Seismic Safety Commission is charged with reporting annually to the Governor and to the Legislature on its findings, progress, and recommendations relating to earthquake hazard reduction.

This bill would create the Seismic Safety Account and would, until July 1, 2007, allow the Legislature to appropriate money in this account for specified purposes. It would, with specified exceptions, require the department to impose an annual assessment on insurers for these purposes, and would allow insurers to recover the amount of this assessment in an equitable fashion from insureds. The bill would require the department to report annually to the Legislature, the commission, and the Department of Finance on the assessment calculation methodology employed.

The bill would provide that, under certain circumstances, the Insurance Fund may loan funds to the Seismic Safety Account, as specified, and would require that any loan be repaid from the assessment described above.

(10) Under existing law, the State Board of Forestry and Fire Protection is required to classify all lands within the state for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state. The prevention and suppression of fires in areas that are not so classified is primarily the responsibility of local or federal agencies.

This bill would impose an annual state responsibility area fire protection benefit fee on each parcel of land located, in whole or in part, within state responsibility areas, except on specified parcels. The bill would provide a fee amount for each parcel. The bill would specify the fees to be imposed for the 2003–04 and 2004–05 fiscal years.

The bill would require counties to collect the fees, as prescribed, thereby imposing a state-mandated local program, and would authorize the counties to increase the benefit fees collected, in an amount to cover their reasonable costs in collecting the fees.

The bill would create the State Responsibility Area Fire Protection Fund and would require the benefit fees collected to be deposited in the fund, to be available, upon appropriation by the Legislature, for fire prevention and suppression services by the Department of Forestry and Fire Protection.

The bill would require the Director of Forestry and Fire Protection, in consultation with specified entities, to convene a stakeholder group to evaluate the method by which fire protection and suppression services in state responsibility areas are provided, and to make a specified report to the Legislature on or before January 1, 2006.

(11) Existing law requires an electric utility to obtain certification from the State Energy Resources Conservation and Development Commission before commencing construction of a thermal powerplant or electric transmission line, with specified exceptions. In order to obtain certification, existing law requires an application for certification of the site and related facility to be filed with the commission, to be in a form and contain information prescribed by the commission, and to be for a site and related facility that has been found to be acceptable by the commission, as specified. Existing law requires that the commission prepare a written decision after a public hearing on an application for certification, which contains specified information.

This bill would require a person who submits to the commission an application for certification for a proposed generating facility to accompany the application with a fee of \$100,000 plus \$250 per megawatt of gross generating capacity of the proposed facility, the total fee not to exceed \$350,000. The bill would require each person who receives certification of a proposed generating facility to pay an annual fee of \$15,000, the first annual payment to be due on the date the bill takes effect, or, for a facility certified on or after the date the bill takes effect, on the date the commission adopts the final decision. The bill would specify that all subsequent payments are due by July 1 of each subsequent year in which the facility retains its certification. The bill would require both fees to be adjusted annually as specified. The bill would not require a fee to accompany an application for certification or an annual fee thereafter for a generating facility that uses a renewable resource, as defined, as its primary fuel or power source. The bill would create the Energy Facility License and Compliance Fund in the State Treasury and would require the above fees received by the commission to be remitted to the Treasurer for deposit in the fund. The bill would require the money in the fund to be expended, upon appropriation by the Legislature, for processing applications for certification and for compliance monitoring.

Existing law authorizes the commission, after one or more hearings, to amend the conditions of, or revoke the certification for, a facility for specified reasons, including that the owner of a project does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved. Existing law requires the commission to



extend the start of the construction deadline by an additional 24 months if the owner reimburses the commission's actual cost of licensing the project.

This bill would require the commission to extend the start of the construction deadline for a facility by an additional 24 months if the owner reimburses the commission's actual cost of licensing the project, less the amount paid to the commission with the application for facility certification.

(12) Existing law requires a person applying for a permit to appropriate water to pay a filing fee of \$100 to the State Water Resources Control Board and requires a person applying for a permit to appropriate water for purposes related to the development of certain hydroelectric energy facilities to pay an application fee, in an amount determined by the board, to cover the reasonable costs of the board and the Department of Fish and Game in evaluating and processing the application. Existing law also imposes fees upon a person registering or renewing registration of a small domestic or livestock stockpond use of water.

This bill would repeal those fees and would instead require a person or entity who holds a permit or license to appropriate water and a lessor of leased water to pay an annual fee according to a fee schedule established by the board. The bill would require each person or entity who files specified applications, registrations, petitions, or requests to pay a fee pursuant to a fee schedule established by the board. The bill also would require a person who files a proof of claim who files a notice to extract specified amounts of groundwater to pay a fee. The bill would require the board to establish a fee schedule setting those fees so that the total amount of fees equals that amount necessary to recover costs incurred in connection with those activities, including certain recoverable costs.

The bill would require the board to adopt the fee schedule as an emergency regulation and would provide for the collection and enforcement of those fees, with certain exceptions, in accordance with the Fee Collection Procedures Law. The bill would impose a state-mandated local program by requiring a sheriff or marshal to provide services in performing writs of execution pursuant to the Fee Collection Procedures Law in connection with the collection of certain fees imposed pursuant to the bill's provisions. Because a person who fails to comply with certain provisions of the Fee Collection Procedures Law is subject to a misdemeanor or felony, as applicable, the bill would impose a state-mandated local program by creating a new crime.

The bill would require the fees, expenses, and penalties collected under these fee provisions and other provisions regarding the determination of water rights to be deposited in the Water Rights Fund,

which this bill would establish in the State Treasury. The bill would authorize the board to expend the money in the Water Rights Fund, upon appropriation by the Legislature, for the purposes of administration of the provisions of the bill, payment of certain refunds, and to carry out various provisions of the Water Code.

The bill would provide that these fees and expenses apply to the United States and to Indian tribes, to the extent authorized under federal or tribal law.

The bill would provide that a water lease does not take effect until the first annual fee is paid, and would prohibit the lease from continuing in effect in any subsequent year unless the annual fee for that year is paid.

The bill would provide for the deposit of specified civil and criminal penalties into the Water Rights Fund and would make conforming changes with regard to existing fees.

(13) Existing law establishes fees for dam ownership and operation based on the height of the dam.

This bill would establish those fees based on a fixed rate and height, and would increase those fees. The bill would require the Department of Water Resources to adopt regulations that establish a schedule of fees to cover the department's costs in administering dam safety programs. The bill would impose a penalty on fees received late. The bill would establish the Dam Safety Fund, into which all fees and other specified revenues would be deposited, to be expended, upon appropriation by the Legislature, for the administration of the dam safety program.

(14) Existing law, the Porter-Cologne Water Quality Control Act, authorizes the board to establish a reasonable fee schedule to cover the cost of giving a certificate that is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state.

This bill would authorize the board to establish a reasonable fee schedule to cover the state board's and the California regional water quality control board's costs incurred in connection with the certificate. The bill would authorize the board to provide for the recovery of specified costs in the fee schedule. The bill would authorize the fee schedule to impose a fee upon a person filing an application for a certificate, or a notice of intent to file an application for a certificate, a person holding a federal permit or license for which a certificate has been issued, and a person required to send a notice of intent to the state board or a regional board to proceed with activity permitted by a general permit.

The bill would require the board, if it adopts a fee schedule, to adopt the fee schedule as emergency regulations. The bill would require any fees collected in connection with certificates for activities involving



hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission to be deposited in the Water Rights Fund.

(15) Under existing law, the term “matching funds” is defined, for purposes of the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, as funds made available by nonstate sources.

This bill would state that, notwithstanding that definition, matching funds for a state agency may include state funds and services.

(16) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature in enacting this act to continue in existence the Dam Inundation Mapping Program in the Office of Emergency Services in order to ensure that the citizens of the state are informed how to best prepare for and respond to natural disasters and other catastrophic events.

SEC. 2. Section 1103 of the Civil Code is amended to read:

1103. (a) Except as provided in Section 1103.1, this article applies to the transfer by sale, exchange, installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of any real property described in subdivision (c), or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(b) Except as provided in Section 1103.1, this article shall apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, that is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, that is classified as personal property intended for use



which the list is issued. The board shall mail the monthly list of registrations filed to any person who so requests.

(d) Prior to the date set forth on the list required under subdivision (c), any interested person may file with the board a written protest in opposition to the approval of a stockpond registration. The protest shall clearly set forth the protestant's objections to the registered use based on interference with prior rights. The protest shall be served on the registrant by the protestant by mailing a duplicate copy of the protest to the registrant, or through service undertaken in another manner determined to be adequate by the board. The procedures set forth in Article 1.5 (commencing with Section 1345) of Chapter 5 shall be used for reviewing a protested registration.

SEC. 83. Section 1228.8 of the Water Code is repealed.

SEC. 84. Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code is repealed.

SEC. 85. Chapter 8 (commencing with Section 1525) is added to Part 2 of Division 2 of the Water Code, to read:

## CHAPTER 8. WATER RIGHT FEES

### Article 1. Fee Schedules

1525. (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

(1) An application for a permit to appropriate water.

(2) A registration of appropriation for a small domestic use or livestock stockpond.

(3) A petition for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit.

(4) A petition to change the point of diversion, place of use, or purpose of use, under a permit or license.

(5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).

(6) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

(7) An application for approval of a water lease agreement.

(8) A request for release from priority pursuant to Section 10504.

(9) An application for an assignment of a state-filed application pursuant to Section 10504.

(c) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing the prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, and the administrative costs incurred in connection with carrying out these actions.

(d) (1) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

(3) The board shall set the amount of total revenue collected each year through the fees authorized by this section at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The board shall review and revise the fees each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the annual Budget Act, the board may further adjust the annual fees to compensate for the over or under collection of revenue.

(e) Annual fees imposed pursuant to this section for the 2003–04 fiscal year shall be assessed for the entire 2003–04 fiscal year.

1528. Each person or entity who files a proof of claim under Article 4 (commencing with Section 2575) of Chapter 3 of Part 3 shall pay a fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall

establish the fees so as to be sufficient on the average to pay the administrative expenses of the board in processing, reviewing, and preparing a report on the claims submitted to the board.

1529. Each person or entity who files a notice pursuant to Part 5 (commencing with Section 4999) shall pay an annual fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall set the filing fees in an amount that is sufficient, on the average, to pay the administrative expenses of the board in processing, compiling, and retaining the notices.

1530. (a) The board shall adopt, by emergency regulation, the schedules of fees authorized under this article. The emergency regulation may include provisions concerning the administration and collection of the fees. The fee schedules may be graduated in accordance with the number of diversions or the amount of water involved. The board shall periodically adjust the amount of the fees specified in the schedule in accordance with this article.

(b) The emergency regulations adopted pursuant to this section, any amendment thereto, or subsequent adjustments to the regulations, shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board, or any adjustment to an annual fee made by the board pursuant to this section, shall remain in effect until revised by the board.

## Article 2. Collection and Enforcement

1535. (a) Any fee subject to this chapter that is required in connection with the filing of an application, registration, request or proof of claim, other than an annual fee required after the period covered by the initial filing fee, shall be paid to the board.

(b) If a fee established under subdivision (b) of Section 1525, Section 1528, or Section 13160.1 is not paid when due, the board may cancel the application, registration, petition, request, or claim, or may refer the matter to the State Board of Equalization for collection of the unpaid fee.

1536. All annual fees, other than the initial filing fee required in connection with the filing of an application, registration, petition, or request, or proof of claim, and all unpaid fees and expenses referred to



the State Board of Equalization for collection pursuant to subdivision (b) of Section 1535 or Section 2868, shall be paid to the State Board of Equalization.

1537. (a) The State Board of Equalization shall collect any fee or expense required to be paid to the State Board of Equalization under this chapter.

(b) (1) The State Board of Equalization shall collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the board that a person or entity is required to pay a fee, or a determination by the board regarding the amount of that fee, is subject to review under Chapter 4 (commencing with Section 1120) of Part 1 and is not subject to a petition for redetermination by the State Board of Equalization.

(3) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept any claim for refund that is based on the assertion that a determination by the board improperly or erroneously calculated the amount of a fee, or incorrectly determined that the person or entity is subject to the fee, unless that determination has been set aside by the board or a court reviewing the determination of the board.

(4) This subdivision shall not be construed to apply Chapter 4 (commencing with Section 1120) of Part 1 to the adoption of regulations under this chapter or to a determination of expenses under Part 3 (commencing with Section 2000).

(c) The board shall provide to the State Board of Equalization the name and address of each person or entity who is liable for a fee or expense, the amount of the fee or expense, and the due date.

1538. In any proceeding pursuant to Section 1052 in which it is determined that there has been a violation of the prohibition against the unauthorized diversion or use of water subject to this division, the board or court, as the case may be, may impose an additional liability in the amount of any annual fees that would have been required under this division if the diversion or use had been authorized by a permit or license to appropriate water.

1539. If a permit or license holder fails to pay an annual fee imposed pursuant to subdivision (a) of Section 1525 for a period of five years, the board may revoke the permit or license in accordance with the procedures for revocation specified in Section 1241.

1540. If the board determines that the person or entity on whom a fee or expense is imposed will not pay the fee or expense based on the fact that the fee payer has sovereign immunity under Section 1560, the

## **Assembly Bill No. 433**

### **CHAPTER 491**

An act to amend Sections 71200, 71201, 71201.5, 71202, 71203, 71204, 71205, 71206, 71207, 71211, 71212, 71213, 71215, 71216, and 71271 of, to amend the headings of Chapter 4 (commencing with Section 71215) of, and Chapter 5 (commencing with Section 71216) of, Division 36 of, to add Sections 71201.7, 71204.2, 71204.3, 71204.5, 71204.7, 71204.9, 71210.5, and 71217 to, and to repeal and add Section 71210 of, the Public Resources Code, and to amend Sections 44000, 44005, 44007, and 44008 of the Revenue and Taxation Code, relating to vessels.

[Approved by Governor September 24, 2003. Filed  
with Secretary of State September 24, 2003.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 433, Nation. Vessels: release of nonindigenous species.

(1) Existing law generally requires the master, operator, or person in charge of a vessel to employ prescribed ballast water management practices for ballast water carried into the waters of the state from areas outside the exclusive economic zone, as defined, in order to minimize the uptake and release of nonindigenous species. Those persons are also required to maintain specified information on board the vessel and provide this information to the State Lands Commission. Existing law imposes civil penalties upon a person who fails to comply with the prescribed ballast water management practices.

Existing law requires the commission to take samples of ballast water and sediment and to take other actions to assess the compliance of any vessel with these requirements. Existing law prohibits any state agency from imposing different requirements prior to January 1, 2004, unless otherwise required by federal law. Existing law requires the commission, the State Water Resources Control Board, and the Department of Fish and Game to conduct prescribed research and make related reports. Existing law requires the commission to establish fees not to exceed \$1,000 per vessel and requires that money, and money collected for civil penalties, to be deposited into the Exotic Species Control Fund. Existing law requires the State Board of Equalization to collect the vessel fees, pursuant to the Ballast Water Management Fee Law.

Existing law repeals these provisions as of January 1, 2004.

This bill would revise and recast the state's law pertaining to control of nonindigenous species and ballast water management, including

revising and adding definitions. The bill would delete exemptions for specified vessels from compliance with the act and revise the qualification for the vessels subject to the act. The bill would impose additional requirements upon vessel masters, owners, operators, and persons in charge of vessels, to prevent the introduction of nonindigenous species into waters of the state or waters that may impact the waters of the state.

The bill would require the master, owner, operator, or person in charge of specified vessels to retain, and make available to the State Lands Commission, additional information, including a separate ballast water log to outline ballast water management activities for each ballast water tank on board the vessel.

The bill would require the State Lands Commission to take samples from at least 25% of arriving vessels subject to nonindigenous species control requirements.

The bill would prohibit prior to January 1, 2010, other state agencies, boards, commissions, or departments from imposing additional requirements on the discharge or release of ballast water and other vectors of nonindigenous species from vessels subject to the bill's requirements, unless that action is mandated by federal law.

The bill would require the State Lands Commission and the Department of Fish and Game, in consultation with other state and federal agencies and interested persons, to make specified studies and reports and to submit the studies and reports to the Legislature.

The bill would rename the Exotic Species Control Fund the Marine Invasive Species Control Fund, and the Ballast Water Management Fee Law the Marine Invasive Species Fee Collection Law.

The bill would expand the persons to whom civil liability may apply and would make specified violations of the act a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The bill would provide an administrative procedure for imposing civil liability and appealing from that imposition. In lieu of the administrative procedure the bill would authorize the Attorney General, at the request of the State Lands Commission, to bring an action in superior court for injunctive relief or civil penalties, as specified.

The bill would delete the 2004 repeal date of the provisions, and extend it until January 1, 2010.

The bill would require the State Lands Commission to adopt any regulations necessary to implement the act, and other specified regulations regarding ballast water management.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 71200 of the Public Resources Code is amended to read:

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) “Ballast tank” means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) “Ballast water” means any water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) “Board” means the State Water Resources Control Board.

(d) “Coastal waters” means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.

(e) “Commission” means the State Lands Commission.

(f) “EEZ” means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.

(g) “Exchange” means to replace the water in a ballast tank using either of the following methods:

(1) “Flow through exchange,” which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.

(2) “Empty/refill exchange,” which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(h) “Mid-ocean waters” means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(i) “Nonindigenous species” means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that

71217. A person who violates subdivision (c) of Section 71216 is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not more than one year.

SEC. 27. Section 71271 of the Public Resources Code is amended to read:

71271. This division shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date. If a federal program and regulations similar to the program and regulations developed pursuant to this division are established and implemented prior to January 1, 2010, the commission shall submit a report to the Legislature within eight months of the implementation of the federal program. The report shall compare the federal program with the program described in this division and make a finding as to the federal program's relative effectiveness in preventing the introduction of marine invasive species from vessels visiting California. The commission shall recommend repeal of the program described in this division only if it finds that the federal program is equally or more effective at implementing and funding effective controls on the release of aquatic invasive species into the waters of the state than the program described in this division.

SEC. 28. Section 44000 of the Revenue and Taxation Code is amended to read:

44000. This part shall be known, and may be cited, as the Marine Invasive Species Fee Collection Law.

SEC. 29. Section 44005 of the Revenue and Taxation Code is amended to read:

44005. Except as authorized in Section 44006, the fee imposed on owners or operators of vessels pursuant to Section 71215 of the Public Resources Code is due and payable to the board 30 days from the date of assessment by the board or the board's agent.

SEC. 30. Section 44007 of the Revenue and Taxation Code is amended to read:

44007. All fees, interest, and penalties imposed and all fees required to be paid to the state pursuant to Section 71215 of the Public Resources Code shall be paid in the form of remittances payable to the board. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Marine Invasive Species Control Fund.

SEC. 31. Section 44008 of the Revenue and Taxation Code is amended to read:

44008. This part shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date; provided,

## Senate Bill No. 50

### CHAPTER 863

An act to amend Section 25214.10 of, and to add Sections 25214.10.1 and 25214.10.2 to, the Health and Safety Code, and to amend Sections 42463, 42464, 42465, 42465.1, 42465.2, 42465.3, 42475, 42475.2, 42476, 42476.5, 42477, 42478, 42479, and 42485 of, to add Sections 42464.4, 42464.6, 42846, and 48000 to, to repeal Section 42475.1 of, and to repeal and add Section 42464.2 of, the Public Resources Code, relating to solid waste, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2004. Filed  
with Secretary of State September 29, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 50, Sher. Solid waste: hazardous electronic waste: solid waste disposal fees.

(1) (A) The Electronic Waste Recycling Act of 2003 makes it unlawful to sell, on or after July 1, 2004, a covered electronic device, as defined, in this state to a consumer, as defined, unless the California Integrated Waste Management Board (board) or the Department of Toxic Substances Control (department) determines that the manufacturer of that device is in compliance with the act.

(B) The act requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. The act requires a manufacturer, on or before April 1, 2004, to inform the retailer if a covered electronic device is subject to the waste recycling fee.

This bill would require the department to adopt regulations to identify electronic devices, as defined, that the department determines are presumed to be, when discarded, a hazardous waste pursuant to the hazardous waste control laws.

The bill would require a manufacturer to inform a retailer and the State Board of Equalization, in accordance with a specified schedule, whether a device is a covered electronic device that is identified in the regulations adopted by the department and would require a covered electronic device identified in the regulations, to be subject to the act in a specified manner. The bill would specify a procedure for a manufacturer to obtain a written nonhazardous determination from the department that an electronic device would not be a hazardous waste when discarded. The bill would require a manufacturer to notify certain retailers with regard to that

determination. The bill would authorize the department to adopt emergency regulations to implement these requirements.

The bill would, instead of (A) above, prohibit a person from selling a new or refurbished covered electronic device in this state, on and after January 1, 2005, if the board or department determines that the manufacturer of the covered electronic device is not in compliance with the act.

(2) Existing law, the act, requires a retailer selling a covered electronic device in this state to collect an electronic waste recycling fee from the consumer on and after November 1, 2004, and to transmit the fee to the board in accordance with a schedule and procedures that the board is required to establish. The act requires the board, in collaboration with the department, on and after July 1, 2005, and at least once every 2 years thereafter, to review and adjust the electronic waste recycling fee, based on specified factors.

This bill, under certain circumstances, would make inapplicable certain penalties relating to the sale of a covered electronic device for which a fee has not been paid to which retailers are otherwise subject under existing law.

The bill would revise the definitions of the terms “consumer,” “covered electronic device,” “covered electronic waste,” “person,” “retailer,” and “retail sale,” and would define the terms “discarded,” “recycling,” “refurbished,” and “video display device” for purposes of the act.

The bill would require a retailer to collect the fee on and after January 1, 2005, instead of November 1, 2004, except as specified.

The bill would revise the procedures for reviewing and adjusting the covered electronic waste recycling fee.

The bill would repeal the authorization for the board to collect the fee and would require the State Board of Equalization to collect the electronic waste recycling fees. The bill would require those fees to be deposited in the Electronic Waste Recovery and Recycling Account. The bill would require the covered electronic waste recycling fee to be due and payable quarterly on or before the last day of the month following each calendar quarter.

(3) The act requires each manufacturer of an electronic device who sells a covered electronic device in this state to submit an annual report to the board on the number of electronic devices sold by the manufacturer.

This bill would authorize a manufacturer to report only on those covered electronic devices that include applications of specified compounds that are exempt from Directive 2002/95/EC, as specified.

(4) Under existing law, the Electronic Waste Recovery and Recycling Account is created in the Integrated Waste Management Fund and the board and the department are authorized to expend the moneys deposited in the account, upon appropriation by the Legislature, for specified purposes.

This bill would continuously appropriate the money in the account to pay refunds and make electronic waste recovery payments and recycling payments. The bill would additionally continuously appropriate the money to make specified payments to manufacturers. The bill would authorize the money in the account to be expended, upon appropriation by the Legislature, for the other specified purposes.

The bill would establish the Electronic Waste Penalty Subaccount in the account, would require all fines or penalties collected pursuant to the act to be deposited in the subaccount, and would authorize the expenditure of the funds in the subaccount only upon appropriation by the Legislature.

(5) Existing law requires the board, in collaboration with the department, to establish an electronic waste recovery payment schedule to cover the net cost of an authorized collector in operating a free and convenient system for collecting, consolidating, and transporting covered electronic wastes. Existing law also requires the board to establish an electronic waste recycling payment schedule to cover an e-waste recycler's net cost of receiving, processing, and recycling covered electronic waste. Existing law requires the board to make those payments, as specified.

The bill would, instead, require the board to make those payments for covered electronic waste collected for recycling on and after January 1, 2005.

The bill would require the amount of the electronic waste recycling payment to be equal to \$0.28 per pound of the total weight of covered electronic waste received from an authorized collector and subsequently processed for recycling, until the board adopts an electronic waste recycling payment schedule for covered electronic waste.

This bill would require the board to adopt regulations specifying cancellation methods for the recovery, processing, or recycling of covered electronic waste and would revise the conditions under which the board may make those payments, including requiring the manufacturer or authorized collector or recycler to provide a cost-free and convenient opportunity to recycle electronic waste. The bill would also require the covered electronic waste, if processed, to be processed in this state according to the cancellation procedure adopted by the board and, would require, as a condition of making those payments, that the board declare that the state is a market participant in the business of the



recycling of covered electronic waste, as specified. The bill would authorize the board to make a payment to a manufacturer who takes back covered electronic waste from a consumer in this state, as specified.

(6) Existing law requires a person who intends to export electronic waste to a foreign destination to comply with specified notification requirements and to demonstrate, among other things, that the handling of the exported electronic waste within the country of destination would meet certain standards adopted by the Organization for Economic Cooperation and Development.

This bill would instead require a person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, to comply with specified notification requirements and make specified demonstrations, including a demonstration with regard to management of the waste in accordance with the decisions and implementing guidelines of the Organization for Economic Cooperation and Development, notwithstanding that the country of destination is not a member of the Organization for Economic Cooperation and Development.

(7) Existing law prohibits the board and the department from implementing the act if specified circumstances occur.

This bill would provide that the provisions of the act shall become inoperative on the date that one of those circumstances occurs, except for specified purposes.

(8) The bill would also make technical changes to the act.

(9) Because the act is incorporated into the hazardous waste control laws, a violation of which is a crime, the bill would impose a state-mandated local program by creating new crimes.

(10) The California Integrated Waste Management Act of 1989 requires each operator of a disposal facility in the state to pay a quarterly fee to the State Board of Equalization, as specified, for all waste disposed of at each disposal site. The fees are deposited in the Integrated Waste Management Account, which may be expended by the board, upon appropriation by the Legislature, for specified purposes regarding the regulation of solid waste.

This bill would require the board and the State Board of Equalization to ensure that the fees that are collected at a transfer station are paid to the State Board of Equalization

(11) The bill would require the Director of Finance to transfer, as a loan, up to \$5,000,000 from the General Fund, and up to \$25,000,000 from any special fund authorized by law, to the board to implement the bill. The bill would require any loan to be repaid on or before November 1, 2005, and prior to the making of specified expenditures.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(13) The bill would declare that it is an urgency statute, to take effect immediately.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25214.10 of the Health and Safety Code is amended to read:

25214.10. (a) For purposes of this section, “electronic device” has the same meaning as a “covered electronic device,” as defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision (b) shall take effect January 1, 2007, or on or after the date Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of an electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) (1) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition

(e) The retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale.

(f) On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are made on or before August 1 shall apply to the calendar year beginning the following January 1. The board shall base an adjustment of the covered electronic waste recycling fee on both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

SEC. 6. Section 42464.2 of the Public Resources Code is repealed.

SEC. 7. Section 42464.2 is added to the Public Resources Code, to read:

42464.2. The State Board of Equalization shall collect the fee imposed pursuant to this chapter under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the purposes of this section, a reference in the Fee Collection Procedures Law to “feepayer” shall include a retailer and a consumer.

SEC. 8. Section 42464.4 is added to the Public Resources Code, to read:

42464.4. (a) The covered electronic waste recycling fee shall be due and payable quarterly on or before the last day of the month following each calendar quarter. The payments shall be accompanied by a return in the form as prescribed by the State Board of Equalization or that person authorized to collect, including, but not limited to, electronic media.

(b) The State Board of Equalization may require the payment of the fee and the filing of returns for other than quarterly periods.

SEC. 8.5. Section 42464.6 is added to the Public Resources Code, to read:

42464.6. (a) The State Board of Equalization shall not accept or consider a petition for redetermination of fees determined under this chapter if the petition is founded upon the grounds that an item is or is

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Citation: 1989 CA ALS 634

1989 Cal ALS 634, \*; 1989 Cal SB 87

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1989 REGULAR SESSION  
CHAPTER 634 (Senate Bill No. 87)

1989 Cal ALS 634; 1989 Cal SB 87; Stats 1989 ch 634

[Approved by Governor September 21, 1989.]

Urgency legislation is effective immediately, Non-urgency legislation will become effective January 1, 1990

**DIGEST:**

SB 87, Garamendi. Taxes: cigarette and tobacco products.

The Tobacco Tax and Health Protection Act of 1988 (Proposition 99), which was adopted by the voters at the general election held on November 8, 1988, imposed a tax on the distribution of cigarettes in addition to the tax imposed pursuant to the Cigarette Tax Law as of the effective date of the adoption of Proposition 99, and imposed a tax on the distribution of certain tobacco products pursuant to a specified formula.

This bill would revise provisions of the Cigarette Tax Law to conform to the adoption of the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), by renaming that law the Cigarette and Tobacco Products Tax Law and by providing that reporting and tax collection requirements applicable to distributors of cigarettes shall also apply to distributors of tobacco products.

The bill would also, in certain circumstances, exempt the distribution of tobacco products from the tax imposed pursuant to the adoption of Proposition 99.

The Tobacco Tax and Health Protection Act of 1988, an initiative measure, requires that amendments to the act must be consistent with the act's purposes, and requires a 4/5 vote of both houses of the Legislature.

This bill, which would declare that it is consistent with the purposes of the act, would therefore require a 4/5 vote.

The bill would declare that it is to take effect immediately as an urgency statute.

**SYNOPSIS:**

An act to amend Sections 30001, 30008, 30009, 30011, 30012, 30014, 30102, 30102.5, 30103, 30104, 30105, 30105.5, 30107, 30108, 30109, 30111, 30140, 30181, 30182, 30183, 30184, 30185, 30186, 30187, 30201, 30221, 30282, 30431, 30432, 30436, 30453, 30454, 30455, 30475, and 30478 of, to amend the heading of Article 3 (commencing with Section 30221) of Chapter 4 of Part 13 of Division 2 of, and to add Sections 30005.5, 30017, 30140.1, 30176.1, 30178.1, 30178.2, and 30179.1 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

**TEXT:**

The people of the State of California do enact as follows: SECTION 1. Section 30001 of the Revenue and Taxation Code is amended to read:

§ 30001.

This part is known and may be cited as the "Cigarette and Tobacco Products Tax Law."

**[\*2]**

SECTION 2. Section 30005.5 is added to the Revenue and Taxation Code, to read:

§ 30005.5.

"Untaxed tobacco product" means any tobacco product which has not yet been distributed in a manner that results in a tax liability under this part.

**[\*3]**

SECTION 3. Section 30008 of the Revenue and Taxation Code is amended to read:

§ 30008.

"Distribution" includes:

(a) The sale of untaxed cigarettes or tobacco products in this state.

(b) The use or consumption of untaxed cigarettes or tobacco products in this state.

(c) The placing in this state of untaxed cigarettes or tobacco products in a vending machine or in retail stock for the purpose of selling the cigarettes or tobacco products to consumers.

**[\*4]**

SECTION 4. Section 30009 of the Revenue and Taxation Code is amended to read:

§ 30009.

"Use or consumption" includes the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof, other than the sale of the cigarettes or tobacco products or the keeping or retention thereof for the purpose of sale.

**[\*5]**

SECTION 5. Section 30011 of the Revenue and Taxation Code is amended to read:

§ 30011.

"Distributor" includes:

(a) Every person who, after 4 o'clock a.m. on July 1, 1959, and within the meaning of the term "distribution" as defined in this chapter, distributes cigarettes.

(b) Every person who, on or after 12:01 a.m. on January 1, 1989, and within the meaning of the term "distribution" as defined in this chapter, distributes tobacco products.

(c) Every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state.

**[\*6]**

SECTION 6. Section 30012 of the Revenue and Taxation Code is amended to read:

§ 30012.

"Dealer" includes every person, other than one holding a distributor's or wholesaler's license, who engages in this state in the sale of cigarettes or tobacco products.

**[\*6.] 5 5**

SECTION 6.5. Section 30014 of the Revenue and Taxation Code is amended to read:

§ 30014.

(a) "Transporter" means any person transporting into or within this state any of the following:

(1) Cigarettes not contained in packages to which are affixed California cigarette tax stamps or meter impressions.

(2) Tobacco products upon which the tobacco products surtax imposed by Article 2 (commencing with Section 30121) of Chapter 2 has not been paid.

(b) "Transporter" shall not include any of the following:

(1) A licensed distributor.

(2) A common carrier.

(3) A person transporting cigarettes and tobacco products under federal internal revenue bond or customs control that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended.

**[\*7]**

SECTION 7. Section 30017 is added to the Revenue and Taxation Code, to read:

§ 30017.

"Wholesale cost" means the cost of tobacco products to the distributor prior to any discounts or trade allowances.

**[\*8]**

SECTION 8. Section 30102 of the Revenue and Taxation Code is amended to read:

§ 30102.

The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products to either of the following:

(a) United States Army, Air Force, Navy, Marine Corps or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores.

(b) The United States Veterans' Administration.

**[\*9]**

SECTION 9. Section 30102.5 of the Revenue and Taxation Code is amended to read:

§ 30102.5.

The taxes imposed by this part shall not apply to the distribution of cigarettes or tobacco products that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended, and the cigarettes or tobacco products are under internal revenue bond or customs control.

**[\*10]**

SECTION 10. Section 30103 of the Revenue and Taxation Code is amended to read:

§ 30103.

The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by the manufacturer to a licensed distributor.

**[\*11]**

SECTION 11. Section 30104 of the Revenue and Taxation Code is amended to read:

**§ 30104.**

The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes or tobacco products on the facilities of the carrier. Whenever cigarettes or tobacco products are sold by distributors to common carriers engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes or tobacco products on those facilities, the tax imposed by Sections 30101 and 30123 shall not be levied with respect to the sales of the cigarettes or tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes or tobacco products on the facilities of the carriers, as the case may be, for the privilege of making sales in California at the same rate as set forth in Sections 30101 and 30123. Those common carriers and authorized persons shall pay the tax imposed by this section and file reports with the board, as provided in Section 30186.

**[\*12]**

**SECTION 12.** Section 30105 of the Revenue and Taxation Code is amended to read:

**§ 30105.**

The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by the original importer to a licensed distributor if the cigarettes or tobacco products are manufactured outside the United States.

**[\*13]**

**SECTION 13.** Section 30105.5 of the Revenue and Taxation Code is amended to read:

**§ 30105.5.**

The taxes imposed by this part shall not apply to the sale or gift of federally tax-free cigarettes or tobacco products when the cigarettes or tobacco products are delivered directly from the manufacturer under Internal Revenue bond to a veterans' home of the State of California or a hospital or domiciliary facility of the United States Veterans' Administration for gratuitous issue to veterans receiving hospitalization or domiciliary care. The tax shall not be imposed with respect to the use or consumption of such cigarettes or tobacco products by the institution or by the veteran patients or domiciliaries.

**[\*14]**

**SECTION 14.** Section 30107 of the Revenue and Taxation Code is amended to read:

**§ 30107.**

The taxes resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 shall be paid by the user or consumer.

**[\*15]**

**SECTION 15.** Section 30108 of the Revenue and Taxation Code is amended to read:

**§ 30108.**

(a) Every distributor engaged in business in this state and selling or accepting orders for cigarettes or tobacco products with respect to the sale of which the tax imposed by Sections 30101 and 30123 is inapplicable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the purchaser becomes so obligated, collect the tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) Every person engaged in business in this state and making gifts of untaxed cigarettes or tobacco products as samples with respect to which the tax imposed by Sections 30101 and 30123 is inapplicable shall, at the time of making the gift or, if the donee is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the donee becomes so obligated, collect the tax from the donee, if the donee is other than a licensed distributor, and shall give the donee a receipt therefor in the manner and form prescribed by the board. This section shall not apply to those distributions of cigarettes or tobacco products which are exempt from tax under Section 30105.5.

(c) "Engaged in business in the state" means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes or tobacco products.

(d) The taxes required to be collected by this section constitute debts owed by the distributor, or other person required to collect the taxes, to the state.

**[\*16]**

**SECTION 16.** Section 30109 of the Revenue and Taxation Code is amended to read:

**§ 30109.**

Unless the contrary is established, it shall be presumed that all cigarettes or tobacco products acquired by a distributor are untaxed cigarettes or tobacco products, and that all cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed.

**[\*17]**

**SECTION 17.** Section 30111 of the Revenue and Taxation Code is amended to read:

§ 30111.

The taxes imposed by this part are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products.

This section does not prohibit the application of Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), or Article 2 (commencing with Section 37021) of Part 17 to the sale, storage, use or other consumption of cigarettes or tobacco products.

**[\*18]**

SECTION 18. Section 30140 of the Revenue and Taxation Code is amended to read:

§ 30140.

Every person desiring to engage in the sale of cigarettes or tobacco products as a distributor (including a common carrier or authorized person mentioned in Section 30104), except a person who desires merely to sell or accept orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state, shall file with the board an application, in such form as the board may prescribe, for a distributor's license. A distributor shall apply for and obtain a license for each place of business at which he or she engages in the business of distributing cigarettes or tobacco products.

**[\*19]**

SECTION 19. Section 30140.1 is added to the Revenue and Taxation Code, to read:

§ 30140.1.

(a) The board may adopt rules and regulations which provide for the issuance of a license to a person who is not engaged in business in this state.

(b) A holder of a license shall collect the tax imposed by this part, give receipts for the collected tax, and pay the tax to the board in the same manner as licensees engaged in business in this state.

**[\*20]**

SECTION 20. Section 30176.1 is added to the Revenue and Taxation Code, to read:

§ 30176.1.

(a) The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) of Chapter 2 which is paid on the distribution of tobacco products which are shipped to a point outside the state for subsequent use or sale out of the state.

(b) This section does not apply to tobacco products delivered to the consumer in this state and subsequently taken outside the state.

**[\*21]**

SECTION 21. Section 30178.1 is added to the Revenue and Taxation Code, to read:

§ 30178.1.

Any applications for a refund under Section 30176.1 based upon the exportation of tax-paid tobacco products from this state shall be filed with the board within three months after the close of the calendar month in which the tobacco products are exported.

**[\*22]**

SECTION 22. Section 30178.2 is added to the Revenue and Taxation Code, to read:

§ 30178.2.

In lieu of the refund of the tax on tobacco products pursuant to Section 30176.1, a distributor eligible for that refund may elect to claim a credit against taxes imposed pursuant to this part equal to the amount which would have been refunded if a claim had been made pursuant to Section 30176.1.

**[\*23]**

SECTION 23. Section 30179.1 is added to the Revenue and Taxation Code, to read:

§ 30179.1.

No interest shall be allowed on an overpayment of the tax on exported tobacco products which is refunded pursuant to Section 30176.1 or credited against taxes pursuant to Section 30178.2 within 90 days of the claim for the credit or refund.

**[\*24]**

SECTION 24. Section 30181 of the Revenue and Taxation Code is amended to read:

§ 30181.

(a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101) or Article 2 (commencing with Section 30121) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form prescribed by the board for each calendar month. The return shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) of Chapter 2 for that period. To facilitate the

administration of this part, the board may require the filing of the returns for longer than monthly periods.

**[\*25]**

SECTION 25. Section 30182 of the Revenue and Taxation Code is amended to read:

§ 30182.

(a) On or before the 25th day of each month, every distributor shall file on forms prescribed by the board a report respecting his or her distributions of cigarettes and purchases of stamps and meter register units during the preceding month and such other information as the board may require to carry out this part.

(b) On or before the 25th day of each month, each distributor shall file, on forms prescribed by the board, a return respecting his or her distributions of tobacco products and their wholesale cost during the preceding month, and such other information as the board may require to carry out this part.

**[\*26]**

SECTION 26. Section 30183 of the Revenue and Taxation Code is amended to read:

§ 30183.

(a) On or before the 25th day of each month every distributor required under Section 30108 to collect any tax during the preceding month shall file a report with the board on forms prescribed by the board showing the number of cigarettes with respect to which he or she was required to collect the tax and such other information as the board may require to carry out the purposes of this part.

(b) On or before the 25th day of each month, each distributor required to collect any tax during the preceding month pursuant to Section 30108 shall file a return, on forms prescribed by the board, which shows the wholesale cost of tobacco products with respect to which he or she was required to collect the tax and such other information as the board may require to carry out this part.

**[\*27]**

SECTION 27. Section 30184 of the Revenue and Taxation Code is amended to read:

§ 30184.

The distributor shall submit with each report or return a remittance payable to the board for the amount of tax due.

**[\*28]**

SECTION 28. Section 30185 of the Revenue and Taxation Code is amended to read:

§ 30185.

Except as otherwise provided in Section 30172, the board for good cause may extend for not to exceed one month the time for making any report or return or paying any amount of tax required under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted pursuant to this section shall pay, in addition to the amount of tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the amount of tax would have been due without the extension to the date of payment.

**[\*29]**

SECTION 29. Section 30186 of the Revenue and Taxation Code is amended to read:

§ 30186.

On or before the 25th day of each month the common carriers and authorized persons specified in Section 30104 shall file with the board a report of the sales of cigarettes or tobacco products made by them on the facilities of the carriers in California in the preceding calendar month in such detail and form as the board may prescribe, submitting with the report the amount of the tax due under Section 30104.

**[\*30]**

SECTION 30. Section 30187 of the Revenue and Taxation Code is amended to read:

§ 30187.

Every consumer or user subject to the tax resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 from whom the tax has not been collected under Section 30108 shall on or before the 25th day of the month following receipt of cigarettes or tobacco products file with the board a report of the amount of cigarettes received by him or her in the preceding calendar month in such detail and form as the board may prescribe, submitting with the report the amount of tax due.

**[\*31]**

SECTION 31. Section 30201 of the Revenue and Taxation Code is amended to read:

§ 30201.

If the board is dissatisfied with the report or return filed by any person, it may compute and determine the amount to be paid upon the basis of any information available to it. One or more deficiency determinations may be made of the amount of tax due for one or for more than one month.

**[\*32]**

SECTION 32. The heading of Article 3 (commencing with Section 30221) of Chapter 4 of Part 13 of Division 2 of the Revenue and Taxation Code is amended to read:



**ARTICLE 3**  
**Determinations If No Report Or Return Made**

**[\*33]**

**SECTION 33.** Section 30221 of the Revenue and Taxation Code is amended to read:  
§ 30221.

If any person fails to make a report or return, the board shall make an estimate of the number of cigarettes or the wholesale cost of tobacco products distributed by him or her. The estimate shall be made for the month or months in respect to which the person failed to make a report or return and shall be based upon any information available to the board. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus fixed a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one month.

**[\*34]**

**SECTION 34.** Section 30282 of the Revenue and Taxation Code is amended to read:  
§ 30282.

If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the penalty provided by Sections 30171, 30221, 30264, and 30281.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

**[\*35]**

**SECTION 35.** Section 30431 of the Revenue and Taxation Code is amended to read:  
§ 30431.

Any transporter desiring to possess or acquire for transportation or transport upon the highways, roads or streets of this state more than 400 cigarettes which are not contained in packages to which are affixed California cigarette stamps or meter impressions or tobacco products with a value of twenty-five dollars (\$ 25) or more shall obtain a permit from the board authorizing such transporter to possess or acquire for transportation or transport the cigarettes or tobacco products, and he shall have the permit in the transporting vehicle during the period of transportation of the cigarettes or tobacco products. The application for the permit shall be in such form and shall contain such information as may be prescribed by the board. The board may issue a permit for a single load or shipment or for a number of loads or shipments to be transported under specified conditions.

**[\*36]**

**SECTION 36.** Section 30432 of the Revenue and Taxation Code is amended to read:  
§ 30432.

Each transporter who shall transport or possess or acquire for the purpose of transporting upon the highways, roads or streets of this state more than 400 cigarettes which are not contained in packages to which are affixed California cigarette tax stamps or meter impressions or tobacco products with a value of twenty-five dollars (\$ 25) or more is required to have in the transporting vehicle during the period of transportation invoices, bills of lading or delivery tickets covering the cigarettes or tobacco products being transported which shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser and the quantity and brands of the cigarettes or tobacco products transported.

**[\*37]**

**SECTION 37.** Section 30436 of the Revenue and Taxation Code is amended to read:  
§ 30436.

The following property, upon seizure by the board, is hereby forfeited to the State of California:

(a) Cigarettes or tobacco products transported upon the highways, roads or streets of this state in violation of the provisions of Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter Impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents thereof, which has been loaded in whole or in part with packages of cigarettes which do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

**[\*38]**

**SECTION 38.** Section 30453 of the Revenue and Taxation Code is amended to read:  
§ 30453.

Every distributor and every person dealing in, transporting, or storing cigarettes or tobacco products in this state shall keep such records, receipts, invoices, and other pertinent papers with respect thereto in such form as the board may require.

**[\*39]**

SECTION 39. Section 30454 of the Revenue and Taxation Code is amended to read:

§ 30454.

The board or its authorized representative may make such examinations of the books, papers, records, and equipment of any person dealing in, transporting, or storing cigarettes or tobacco products and such other investigations as it may deem necessary in carrying out the provisions of this part.

In addition to any other reports required under this part, the board may, by rule or otherwise, require additional, other, or supplemental reports from licensed distributors, dealers, transporters, common and private carriers, warehousemen, bailees, and other persons, including reports of shipments of cigarettes or tobacco products from a point outside this state to a point within this state, and prescribe the form, including verification, of the information to be given on, and the times for filing of, such additional, other, or supplemental reports.

**[\*40]**

SECTION 40. Section 30455 of the Revenue and Taxation Code is amended to read:

§ 30455.

It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person.

Nothing in this section shall prevent the board from exchanging with officials of other states information concerning interstate shipments of cigarettes or tobacco products.

Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$ 1,000), by imprisonment not exceeding one year, or by both, in the discretion of the court.

**[\*41]**

SECTION 41. Section 30475 of the Revenue and Taxation Code is amended to read:

§ 30475.

(a) Any transporter who transports cigarettes or tobacco products upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars (\$ 1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

(b) Any transporter who, with intent to defeat or evade or with intent to aid another to defeat or evade the taxes imposed by this part, at any given time transports 40,000 or more cigarettes or tobacco products with a value of five thousand dollars (\$ 5,000) or more upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 shall be punished by imprisonment in the county jail for not more than one year, or in the state prison, or by fine of not more than five thousand dollars (\$ 5,000), or be subject to both fine and imprisonment in the discretion of the court.

**[\*42]**

SECTION 42. Section 30478 of the Revenue and Taxation Code is amended to read:

§ 30478.

It shall be a misdemeanor for any retailer, as defined in Section 6015, to knowingly purchase cigarettes or tobacco products for resale from any person except a distributor or wholesaler licensed pursuant to this part.

**[\*43]**

SECTION 43. The Legislature finds and declares that the provisions of this act are consistent with the purposes of the Tobacco Tax and Health Protection Act of 1988 within the meaning of Section 30130 of the Revenue and Taxation Code.

**[\*44]**

SECTION 44. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide correct and adequate funding to the Cigarette and Tobacco Products Surtax Fund which will fund tobacco-related programs, including education, fire prevention, medical and hospital care, and research, it is necessary that the act take effect immediately.

EXPLANATORY NOTES SENATE BILL 87:

Rev & Tax C § 30001. Substituted " 'Cigarette and Tobacco Products Tax Law' " for " "'Cigarette Tax Law' ".

Rev & Tax C § 30008. Added "or tobacco products" wherever it appears.

Rev & Tax C § 30009. Added "or tobacco products" both times it appears.

Rev & Tax C § 30011. (1) Added subd (b); (2) redesignated former subd (b) to be subd (c); and (3) added "or

tobacco products" in subd (c).

Rev & Tax C § 30012. Added "or tobacco products".

Rev & Tax C § 30014. (1) Added subdivision designations (a) and (b); (2) amended subd (a) by adding (a) "any of the following: (1)"; and (b) subd (a)(2); and (2) amended subd (b) by (a) deleting "However," at the beginning; (b) adding "any of the following" in the introductory clause; (c) redesignating former subds (a)-(c) to be subds (b)(1)-(b)(3); and (d) adding "and tobacco products" in subd (b)(3).

Rev & Tax C § 30102. Substituted (1) "or tobacco products to either of the following" for "to" in the introductory clause; and (2) the period for ", or" at the end of subd (a).

Rev & Tax C § 30102.5. Added "or tobacco products" both times it appears.

Rev & Tax C § 30103. Added "or tobacco products".

Rev & Tax C § 30104. (1) Generally eliminated "such"; (2) added "or tobacco products" wherever it appears; and (3) substituted "Sections 30101 and 30123" for "Section 30101" both times it appears.

Rev & Tax C § 30105. Added "or tobacco products" both times it appears.

Rev & Tax C § 30105.5. Added "or tobacco products" wherever it appears.

Rev & Tax C § 30107. Added "or tobacco products".

Rev & Tax C § 30108. (1) Added "or tobacco products" wherever it appears; (2) substituted "Sections 30101 and 30123" for "Section 30101" in subds (a) and (b); (3) added "or her" after "respect to his" in subds (a) and (b); and (4) amended subd (c) by (a) adding the comma after "or storage place" in subd (c)(1); and (b) substituting "salesperson" for "salesman" after "agent," in subd (c)(2).

Rev & Tax C § 30109. Added "or tobacco products" wherever it appears.

Rev & Tax C § 30111. (1) Added "or tobacco products" in the first and second paragraphs; and (2) deleted "of this division" after "Part 17" in the second paragraph.

Rev & Tax C § 30140. Added (1) "or tobacco products" wherever it appears; and (2) "or she" after "which he" in the last sentence.

Rev & Tax C § 30181. (1) Designated the former section to be subd (a); (2) amended subd (a) by adding (a) "upon cigarettes" near the beginning; and (b) "or Article 2 (commencing with Section 30121)"; and (3) added subd (b).

Rev & Tax C § 30182. (1) Designated the former section to be subd (a); (2) amended subd (a) by (a) adding "or her" after "respecting his"; and (b) deleting "the purposes of" after "to carry out" near the end; and (3) added subd (b).

Rev & Tax C § 30183. (1) Designated the former section to be subd (a); (2) added "or she" after "to which he" in subd (a); and (3) added subd (b).

Rev & Tax C § 30184. Added "or return".

Rev & Tax C § 30185. Added "or return" after "making any report" in the first paragraph.

Rev & Tax C § 30186. Added "or tobacco products" after "of cigarettes".

Rev & Tax C § 30187. Added "or tobacco products" both times it appears; and (2) "or her" after "received by him".

Rev & Tax C § 30201. Added "or return" in the first sentence.

The amendment to the heading of Article 3 (commencing with Section 30221) of the Revenue and Taxation Code added "Or Return".

Rev & Tax C § 30221. (1) Added "or return" after "make a report" in the first and second sentences; and (2) substituted "or the wholesale cost of tobacco products distributed by him or her" for "distributed by him" in the first sentence.

Rev & Tax C § 30282. Substituted (1) "Sections 30171, 30221, 30264, and 30281" for "Sections 30171, 30221, and 30281" in the first paragraph; and (2) "the claim for relief is based" for "he bases his claim for relief" at the end of the second paragraph.

Rev & Tax C § 30431. Amended the first sentence by adding (1) "or tobacco products with a value of twenty-five dollars (\$ 25) or more"; and (2) "or tobacco products" after "the cigarettes" both times it appears.

Rev & Tax C § 30432. Added (1) "or tobacco products with a value of twenty-five dollars (\$ 25) or more"; and (2) "or tobacco products" after "the cigarettes" both times it appears.

Rev & Tax C § 30436. Added "or tobacco products" wherever it appears; (2) "or tobacco products upon which the tobacco products surtax has not been paid" in subds (b) and (c); and (3) "tobacco products," after "cigarettes," in subd (c).

Rev & Tax C § 30453. Added "or tobacco products".

Rev & Tax C § 30454. (1) Added "or tobacco products" after "storing cigarettes" in the first paragraph and after "shipments of cigarettes" in the second paragraph; and (2) substituted "or" for "and" after "may, by rule" in the second paragraph.

Rev & Tax C § 30455. Added "or tobacco products" at the end of the second paragraph.

Rev & Tax C § 30475. Added (1) "or tobacco products" wherever it appears; and (2) "or tobacco products with a value of five thousand dollars (\$ 5,000) or more" in subd (b).

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## Assembly Bill No. 1936

### CHAPTER 459

An act to amend Sections 7403.2, 7651, 7652.5, 7652.7, 8752, 30181, 30182, 30183, 30186, 30187, 30188, 32251, 40061, 40063, 41052, 43151, 43152.6, 43152.7, 43152.9, 43152.13, 43152.14, 45151, 46151, 50109, 60107, 60201, 60202, 60204, 60205, and 60205.5 of, and to add Sections 8763, 30193, 32263, 40069, 41063, 43173, 45163, 46163, 50112.10, 55040, and 60505.5 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 11, 2002. Filed  
with Secretary of State September 11, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1936, Horton. Taxation: State Board of Equalization: returns.

The State Board of Equalization administers various tax laws, including the Sales and Use Tax Law, under which the board is authorized to accept sales and use tax returns by electronic media. That law also requires that returns filed with the board be authenticated in a manner prescribed by the board.

This bill would provide a similar authorization and authentication requirement under the Motor Vehicle Fuel Tax Law, the Use Fuel Tax Law, the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Underground Storage Tank Maintenance Fee Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7403.2 of the Revenue and Taxation Code is amended to read:

7403.2. (a) For the privilege of purchasing motor vehicle fuel exempt from taxes under paragraph (11) of subdivision (a) of Section 7401, each train operator must make a report to the board showing:

(1) The name and license number of the supplier from whom it purchased motor vehicle fuel and the number of gallons of motor vehicle fuel purchased that is exempt from the tax.

(2) Any other information required by the board.

(b) Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the information in subdivision (a) during each quarterly reporting period. The report shall be filed with the board on or before the last day of the month following the close of the quarterly period to which it relates. To facilitate the administration of this part, the board may require the filing of these reports for other than quarterly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) All of the administrative provisions of this part relating to a supplier shall be applicable to a train operator.

(d) The board may revoke the train operator's license provided for in Section 7403.1 due to the filing of inaccurate or improper reports.

SEC. 2. Section 7651 of the Revenue and Taxation Code is amended to read:

7651. Each supplier shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of motor vehicle fuel removed, sold, or entered within this state during each calendar month, or that monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the month following the monthly period to which it relates, together with a remittance payable to the Controller for the amount of tax due for that period less whatever amounts may have been paid theretofore for the same period because of returns, prepayment forms, and payments made on a weekly basis. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 3. Section 7652.5 of the Revenue and Taxation Code is amended to read:

7652.5. (a) Each terminal operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, the following:

(1) The name and license number of each person that is a position holder at each terminal it operates;

(2) The amount of motor vehicle fuel received at each terminal it operates;

(3) The identity of each position holder with respect to the rack removals of motor vehicle fuel from each terminal it operates and the volume and dates of the removals;

(4) The amount of motor vehicle fuel stored at each terminal it operates;

(5) The destination (by state) of all motor vehicle fuel removed at a terminal rack of each terminal it operates, to the extent that information has been provided to the terminal operator; and

(6) Any other information required by the board for the proper administration of this part.

The terminal operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a terminal operator may satisfy the requirements of subdivision (a) above by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the terminal operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a terminal operator to file reports as specified in subdivision (a).

SEC. 4. Section 7652.7 of the Revenue and Taxation Code is amended to read:

7652.7. (a) Each pipeline operator and vessel operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(1) The amount of motor vehicle fuel delivered to each terminal or refinery.

(2) The location of the terminal or refinery where the motor vehicle fuel was delivered.

(3) The date of delivery.

(4) Any other information required by the board for the proper administration of this part.

The pipeline operator and vessel operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a pipeline operator and vessel operator may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the pipeline operator and vessel operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a pipeline operator and vessel operator to file reports as specified in subdivision (a).

SEC. 5. Section 8752 of the Revenue and Taxation Code is amended to read:

8752. (a) Except as provided in subdivision (b), on or before the last day of the calendar month following each quarterly period, every user shall, except as otherwise provided in Section 8608, file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the amount of any tax due and any other information as the board may require to carry out the purposes of this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) This section shall not be applicable to any user whose sole use of fuel subject to the tax imposed by this part is for the propulsion of a privately operated passenger automobile, provided that the fuel used in this state, except fuel brought into this state in the fuel tank of the vehicle, is purchased from and delivered into the fuel tank of the vehicle by a vendor holding a permit issued under this part.

SEC. 6. Section 8763 is added to the Revenue and Taxation Code, to read:

8763. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 7. Section 30181 of the Revenue and Taxation Code is amended to read:

30181. (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101), Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2



is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form as prescribed by the board, which may include, but not be limited to, electronic media for each calendar month. The return shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2 for that period. To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 8. Section 30182 of the Revenue and Taxation Code is amended to read:

30182. (a) On or before the 25th day of each month, every distributor shall file a report in the form as prescribed by the board, which may include, but not be limited to, electronic media respecting his or her distributions of cigarettes and purchases of stamps and meter register units during the preceding month and any other information as the board may require to carry out this part. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) On or before the 25th day of each month, each distributor shall file a return, in the form as prescribed by the board, which may include, but not be limited to, electronic media, respecting his or her distributions of tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 9. Section 30183 of the Revenue and Taxation Code is amended to read:

30183. (a) On or before the 25th day of each month every distributor required under Section 30108 to collect any tax during the preceding month shall file a report with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the number of cigarettes with respect to which

he or she was required to collect the tax and any other information as the board may require to carry out the purposes of this part. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) On or before the 25th day of each month, each distributor required to collect any tax during the preceding month pursuant to Section 30108 shall file a return, in the form as prescribed by the board, which may include, but not be limited to, electronic media which shows the wholesale cost of tobacco products with respect to which he or she was required to collect the tax and any other information as the board may require to carry out this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 10. Section 30186 of the Revenue and Taxation Code is amended to read:

30186. On or before the 25th day of each month, the common carriers and authorized persons specified in Section 30104 shall file with the board a report of the sales of cigarettes or tobacco products made by them on the facilities of the carriers in California in the preceding calendar month in that detail as the board may prescribe and in the form as prescribed by the board, which may include, but not be limited to, electronic media, submitting with the report the amount of the tax due under Section 30104. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 11. Section 30187 of the Revenue and Taxation Code is amended to read:

30187. Every consumer or user subject to the tax resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 from whom the tax has not been collected under Section 30108 shall, on or before the 25th day of the month following receipt of cigarettes or tobacco products, file with the board a report of the amount of cigarettes received by him or her in the preceding calendar month in that detail as the board may prescribe and in the form as prescribed by the board, which may include, but not be limited to, electronic media, submitting with the report the amount of tax due. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 12. Section 30188 of the Revenue and Taxation Code is amended to read:

30188. On or before the 25th day of each month, every wholesaler shall file a report in the form as prescribed by the board, which may include, but not be limited to, electronic media respecting his or her inventory, purchases, and sales of cigarettes or tobacco products during the preceding month and any other information as the board may require

to carry out the purposes of this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 13. Section 30193 is added to the Revenue and Taxation Code, to read:

30193. (a) Any return, report, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 14. Section 32251 of the Revenue and Taxation Code is amended to read:

32251. The tax is a direct obligation of the taxpayer and is due and payable monthly on or before the 15th day of each calendar month. Each taxpayer, on or before the 15th day of each month, shall make out a tax return for the preceding calendar month, in the form as prescribed by the board, which may include, but not be limited to, electronic media, showing the amount of beer or wine or distilled spirits sold in this state, the amount of tax for the period covered by the return, and any other information as the board deems necessary. The taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before the 15th day of the month. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 15. Section 32263 is added to the Revenue and Taxation Code, to read:

32263. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 16. Section 40061 of the Revenue and Taxation Code is amended to read:

40061. On or before the last day of the month following each calendar quarter, a return for the preceding quarterly period shall be filed with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media.

A return shall be filed by every electric utility and by every person purchasing electrical energy, the consumption of which is subject to the surcharge and who has not paid the surcharge billed and required to be collected by an electric utility. The return shall be signed by the person required to file the return or by his or her duly authorized agent. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 17. Section 40063 of the Revenue and Taxation Code is amended to read:

40063. The board may prescribe the contents of returns of consumers subject to the surcharge. It may require the filing of returns by consumers in addition to those required by Section 40061 in circumstances where it finds that consumers' liabilities are not being included in the return of an electric utility or it determines that consumer returns are necessary for the efficient administration of this part. Consumers' returns shall cover the periods as the board may prescribe and shall be in the form as prescribed by the board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 18. Section 40069 is added to the Revenue and Taxation Code, to read:

40069. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 19. Section 41052 of the Revenue and Taxation Code is amended to read:

41052. On or before the last day of the second month following each month in which the surcharges were collected, a return for that month shall be filed with the board in the form as prescribed by the board, which

may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

The service supplier shall include a list of any service users who have refused to pay a cumulative total of three dollars (\$3) or more of the surcharge imposed by this part with each return filing.

SEC. 20. Section 41063 is added to the Revenue and Taxation Code, to read:

41063. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 21. Section 43151 of the Revenue and Taxation Code is amended to read:

43151. (a) The fee imposed pursuant to Section 25174.1 of the Health and Safety Code, which is a tax collected and administered under Section 43051, is due and payable to the board monthly on or before the last day of the third calendar month following the end of the calendar month for which the fee is due. Each taxpayer shall, on or before the last day of the third calendar month following the end of the calendar month for which the fee is due, make out a tax return for the calendar month, in the form as prescribed by the board, which may include, but not be limited to, electronic media in accordance with subdivision (c). The taxpayer shall deliver the return, together with a remittance of the amount of fee due, to the office of the board on or before the last day of the third calendar month following the end of the calendar month for which the fee is due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) With the approval of the board, a taxpayer who has more than one facility subject to the taxes collected and administered under this chapter, may file a combined tax return covering operations at more than one, or all, of those facilities.

(c) The form required to be submitted by the taxpayer pursuant to this section shall show, for the taxpayer and for each person from whom the taxpayer accepted hazardous waste for disposal, all of the following:

(1) The total amount of hazardous waste subject to the tax and the amount of the tax for the period covered by the return.

(2) The amount of hazardous waste disposed during the tax period that is in each of the fee categories described in Section 25174.6 of the Health and Safety Code, and the amount of disposal fees paid for each of those categories.

(3) The amount of hazardous waste received for disposal by the taxpayer's facility or facilities that is exempt from the payment of disposal fees pursuant to Section 25174.7 of the Health and Safety Code, including a copy of any written documentation provided for any shipment or shipments of hazardous waste received by a facility.

(4) The amount of RCRA hazardous waste which is treated by the taxpayer so that the waste is considered to be non-RCRA hazardous waste for purposes of the disposal fee, pursuant to paragraph (2) of subdivision (b) of Section 25174.6.

(d) (1) Each taxpayer shall maintain records documenting all of the following information for each person who has submitted hazardous waste for disposal by the taxpayer during each calendar month and shall make those records available for review and inspection at the request of the board or the department:

(A) The tonnage of hazardous waste submitted for disposal.

(B) The type of hazardous waste disposed as specified by Section 25174.6 of the Health and Safety Code, including both of the following:

(i) Any characterization of the hazardous waste made by the person submitting the hazardous waste for disposal.

(ii) Any other documentation which the taxpayer maintains regarding the type of hazardous waste disposed to land.

(C) Any representation made by the person submitting the hazardous waste regarding any exemptions that may be applicable to the payment of disposal fees.

(D) For any RCRA hazardous waste which is treated by the taxpayer so that the waste is considered to be non-RCRA hazardous waste for purposes of the disposal fee, pursuant to paragraph (2) of subdivision (b) of Section 25174.6, all of the following information:

(i) The tonnage and type of hazardous waste.

(ii) The method or methods used to treat the hazardous waste.

(iii) Operating records documenting the treatment activity.

(iv) Representative and statistical waste sampling and analysis data demonstrating that the waste is no longer RCRA hazardous waste at the time of disposal.

(2) If the hazardous wastes submitted for disposal were accompanied by a manifest, the information specified in paragraph (1) shall be maintained by manifest number for each calendar month.

SEC. 22. Section 43152.6 of the Revenue and Taxation Code is amended to read:

43152.6. (a) The fee imposed pursuant to Section 25205.2 of the Health and Safety Code which is collected and administered under Section 43053 of this code is due and payable to the board annually on or before the last day of the second month following the end of the calendar year.

(b) Every operator of a facility subject to the fee imposed pursuant to Section 25205.2 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) For purposes of subdivision (a), except as provided in subdivision (d), the operator of a facility shall pay the applicable fee based on the type and size of the facility, as specified in Sections 25205.1 and 25205.4 of the Health and Safety Code. The board shall credit the prepayment of the fee made pursuant to Section 43152.12 against the amount due with the annual return.

(d) Notwithstanding subdivision (c), the fee for the 1991 reporting period, which is from July 1, 1991, to December 31, 1991, inclusive, is 50 percent of the fee specified in Section 25205.4 of the Health and Safety Code, based on the type and size of the facility, as specified in Section 25205.4 of the Health and Safety Code.

SEC. 23. Section 43152.7 of the Revenue and Taxation Code is amended to read:

43152.7. (a) The fee imposed pursuant to Section 25205.5 of the Health and Safety Code which is collected and administered under Section 43053 is due and payable on the last day of the second month following the end of the calendar year.

(b) Every generator subject to the fee imposed pursuant to Section 25205.5 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. The board shall credit the prepayment made pursuant to Section 43152.15 against the amount due with the annual return. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) The fee imposed by Section 25205.5 of the Health and Safety Code shall be offset by any fees paid by the generator for the preceding calendar year for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department. The amount of the credit provided under this subdivision shall not exceed an amount equal to the fees paid

to the local agency or the generator fee due under Section 25205.5 of the Health and Safety Code, whichever is less. The credit for local fees paid shall not include fees required under Chapter 6.7 (commencing with Section 25280) or Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

SEC. 24. Section 43152.9 of the Revenue and Taxation Code is amended to read:

43152.9. (a) The fee imposed pursuant to Section 25205.6 of the Health and Safety Code, which is collected and administered under Section 43054, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every corporation subject to the fee imposed pursuant to Section 25205.6 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 25. Section 43152.13 of the Revenue and Taxation Code is amended to read:

43152.13. (a) The fee imposed pursuant to Section 105190 of the Health and Safety Code, which is collected and administered under Section 43056, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every employer subject to the fee imposed pursuant to Section 105190 of the Health and Safety Code shall in the form as prescribed by the board, which may include, but not be limited to, electronic media file an annual return and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 26. Section 43152.14 of the Revenue and Taxation Code is amended to read:

43152.14. The fee imposed pursuant to Section 105310 of the Health and Safety Code, that is collected and administered under Section 43057, is due and payable on or before April 1 of each year for the previous calendar year. A feepayer shall file a return in the form as prescribed by the board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 27. Section 43173 is added to the Revenue and Taxation Code, to read:

43173. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media



shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 28. Section 45151 of the Revenue and Taxation Code is amended to read:

45151. (a) The fee imposed pursuant to Section 48000 of the Public Resources Code is due and payable to the board quarterly on or before the 25th day of the calendar month following the quarterly period for which the fee is due. Each feepayer shall prepare a return in the form as prescribed by the board, which may include, but not be limited to, electronic media, showing the total amount of solid waste subject to the fee, the amount of fee for the period covered by the return, and any other information that the board determines to be necessary. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) The feepayer shall deliver the return, together with a remittance of the amount of fee due, to the office of the board on or before the 25th day of the calendar month following the quarterly period for which the fee is due.

SEC. 29. Section 45163 is added to the Revenue and Taxation Code, to read:

45163. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 30. Section 46151 of the Revenue and Taxation Code is amended to read:

46151. (a) The fees collected and administered under Sections 46051 and 46052 are due and payable to the board monthly on or before the 25th day of the calendar month following the monthly period for

which the fee is due. Each feepayer, on or before the 25th day of the month following each monthly period, shall make out a return in the form as prescribed by the board, which may include, but not be limited to, electronic media for the preceding monthly period, in the form as prescribed by the board, showing the information required to be reported by Sections 8670.40 and 8670.48 of the Government Code and any other information that the board determines to be necessary to carry out this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) The feepayer shall deliver the return, together with a remittance of the amount of fee due, if any, to the office of the board on or before the 25th day of the month following the monthly period for which the fee is due.

(c) In addition to the returns due pursuant to subdivision (a), each feepayer shall provide an annual information return, in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the information required to be reported by Section 8670.48 of the Government Code and any other information that the board determines to be necessary to carry out this part. The feepayer shall deliver the return containing the required information for the preceding calendar year to the office of the board on or before February 1st of each year. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 31. Section 46163 is added to the Revenue and Taxation Code, to read:

46163. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 32. Section 50109 of the Revenue and Taxation Code is amended to read:

50109. The fee collected under Section 50108 is due and payable to the board quarterly on or before the 25th day of the month following the end of each calendar quarter. Each feepayer, on or before the 25th day of the month following the quarterly period for which the fee is due, shall prepare a fee return for the preceding quarterly period, in the form as

prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of petroleum placed into underground storage tanks which he or she owns during the period, the amount of the fee for the period covered by the return, and any other information that the board determines to be necessary. The feepayer shall deliver the return, together with a remittance of the amount of the fee due, to the office of the board on or before the 25th day of the month following the quarterly period for which the fee is due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 33. Section 50112.10 is added to the Revenue and Taxation Code, to read:

50112.10. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 34. Section 55040 is added to the Revenue and Taxation Code, to read:

55040. A feepayer shall file a return in the form as prescribed by the board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 35. Section 60107 of the Revenue and Taxation Code is amended to read:

60107. (a) For the privilege of purchasing diesel fuel exempt from taxes under paragraph (7) of subdivision (a) of Section 60100, each train operator must make a report to the board showing:

(1) The name and permit number of the supplier from whom it purchased undyed diesel fuel and the number of gallons of undyed diesel fuel purchased that is exempt from the tax.

(2) Any other information required by the board.

(b) Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the information in subdivision (a) during each quarterly reporting period. The report shall be filed with the board on or before the last day of the calendar month following the close

of the quarterly period to which it relates. To facilitate the administration of this part, the board may require the filing of these reports for other than quarterly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) The board may revoke the train operator's permit provided for in Section 60106.1 due to the filing of inaccurate or improper reports.

(d) All of the administrative provisions of this part relating to a supplier shall be applicable to a train operator.

SEC. 36. Section 60201 of the Revenue and Taxation Code is amended to read:

60201. Each supplier shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of diesel fuel removed, entered, or sold by him or her within this state during each calendar month, or the monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period, less whatever amounts may have been paid theretofore for the same period because of weekly returns. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 37. Section 60202 of the Revenue and Taxation Code is amended to read:

60202. (a) Each interstate user shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the amount of diesel fuel used during the quarterly reporting period by the interstate user in this state, the amount of any tax due, and any other information as the board may require for the administration of this part. The return shall be filed with the board on or before the last day of the calendar month following the close of the quarterly period to which it relates, together with a remittance payable to the board of the amount of tax due. To facilitate the administration of this part, the board may require the filing of returns for other than quarterly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) An interstate user subject to the tax imposed by Section 60115 shall be allowed a credit against the amount of tax due on his or her return for an amount equal to the tax imposed by Section 60115 on diesel fuel

purchased in this state in that same return period for use in the operation of a qualified motor vehicle. No credit shall be allowed unless the tax imposed by Section 60050 and the taxes imposed by Part 1 (commencing with Section 6001) and Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution have been paid upon the purchase of the diesel fuel by the interstate user to a diesel vendor in this state. When the amount of the credit for any return period exceeds the amount of tax due for the return period, the excess shall be allowed as a credit against the amount of tax due for succeeding reporting periods or shall be refunded.

(c) Credits and refunds allowed pursuant to subdivision (b) shall be charged against the Motor Vehicle Fuel Account to the extent the total amount of credits and refunds allowed to all taxpayers for the fiscal year does not exceed the combined amounts due under subdivisions (a) and (b) of Section 60115. To the extent the total amount of credits and refunds allowed to all taxpayers for the fiscal year pursuant to subdivision (b) exceeds the combined amounts due under subdivisions (a) and (b) of Section 60115, the credits and refunds shall be charged against the Motor Vehicle Fuel Account as to the amount of the credits and refunds established under subdivision (a) of Section 60115 and shall be charged against the Retail Sales Tax Fund as to the amount of the credits and refunds established under subdivision (b) of Section 60115.

SEC. 38. Section 60204 of the Revenue and Taxation Code is amended to read:

60204. (a) Each terminal operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, the following:

- (1) The name and license number of each person that is a positionholder at each terminal it operates.
- (2) The amount of diesel fuel received at each terminal it operates.
- (3) The identity of each positionholder with respect to the rack removals of diesel fuel from each terminal it operates and the volume and dates of the removals.
- (4) The amount of diesel fuel stored at each terminal it operates.
- (5) The destination (by state) of all diesel fuel removed at a terminal rack of each terminal it operates, to the extent that information has been provided to the terminal operator.
- (6) Any other information required by the board for the proper administration of this part.

The terminal operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a terminal operator may satisfy the requirements of subdivision (a) above by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the terminal operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a terminal operator to file reports as specified in subdivision (a).

SEC. 39. Section 60205 of the Revenue and Taxation Code is amended to read:

60205. Each exempt bus operator shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of diesel fuel used in the exempt bus operation by him or her within this state during each calendar month, or the monthly period ended during that calendar month as the board may authorize, the amount of tax pursuant to Section 60502.2 due for the month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 40. Section 60205.5 of the Revenue and Taxation Code is amended to read:

60205.5. (a) Each government entity shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of dyed diesel fuel and undyed diesel fuel used in a diesel-powered highway vehicle during each calendar month, or the monthly period ending during the calendar month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period. To facilitate the administration of this part, the

board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) A government entity that has paid diesel fuel tax to a retail vendor that sold the diesel fuel to the government entity shall be allowed a credit on its tax return for the tax paid to the retail vendor.

SEC. 41. Section 60505.5 is added to the Revenue and Taxation Code, to read:

60505.5. The claim for refund forms prescribed in subdivision (c) of Section 60501 and subdivision (d) of Section 60502 may include, but not be limited to, electronic media. The claim for refund forms shall be authenticated in a form or pursuant to methods as may be prescribed by the board.



## Memorandum

**To:** Mr. Ramon J. Hirsig  
Executive Director

**Date:** January 5, 2010

**From:** Kristine Cazadd, Chief Counsel  
Legal Department

David Gau, Deputy Director  
Property and Special Taxes Department

**Subject:** Rule 100 Changes to Specified Special Tax and Fee Regulations  
Chief Counsel's Rulemaking Calendar  
Board Meeting—January 26, 2010

We request your approval to place proposed Rule 100 changes to eleven Special Tax and Fee regulations on the Chief Counsel's Rulemaking Calendar for the January 26, 2010, Board meeting in order to request the Board's authorization to complete the changes. These proposed changes amend regulations pertaining to the Energy Resources Surcharge Law, the Fee Collection Procedures Law; the Emergency Telephone Users Surcharge Law; the Cigarette and Tobacco Products Tax Law; the Cigarette and Tobacco Products Licensing Act, and the general administration of special taxes; and add a new regulation pertaining to the Fee Collection Procedures Law.

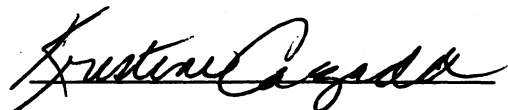
Each of the attached Statements of Explanation includes a detailed description of the proposed changes to each regulation and strikeout and underlined versions of each regulation. These changes are appropriate for processing under Rule 100 without the normal notice and public hearing process because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. These changes correct grammatical errors and cross references; correct and update references to statutes and other regulations; clarify the application of the regulations to certain tax and fee laws; correct a subdivision heading; and update or add citations to the reference notes for these regulations.

In addition, these changes are proposed to bring two regulations into conformity with statutory provisions that have been amended and to bring three regulations into conformity with the Rules for Tax Appeals that have been adopted since the regulations were last amended. A copy of the Rules of Practice that were repealed effective February 6, 2008, is available at [http://www.boe.ca.gov/meetings/pdf/ROP\\_Complete.pdf](http://www.boe.ca.gov/meetings/pdf/ROP_Complete.pdf).



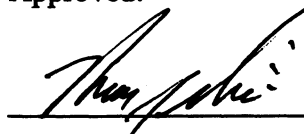
If you have any questions regarding this request, please let me know or contact Ms. Carolee Johnstone at 323-7713.

Recommendation by:



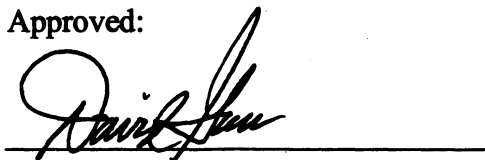
Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



David Gau, Deputy Director  
Property and Special Taxes Department

BOARD APPROVED

At the 01/27/10 Board Meeting



Diane Olson, Chief  
Board Proceedings Division

Attachments

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF  
REGULATIONS, TITLE 1, SECTION 100  
Statements of Explanation

Title 18. Public Revenue	Regulation 2300, <i>Collection of Surcharge</i>
Title 18. Public Revenue	Regulation 2401, <i>Definitions</i>
Title 18. Public Revenue	Regulation 3500, <i>Application of the Fee Collection Procedures Law</i>
	Regulation 3502, <i>Relief from Liability</i>
Title 18. Public Revenue	Regulation 4041, <i>Common Carrier Delivery Reports</i>
Title 18. Public Revenue	Regulation 4500, <i>Definitions</i>
Title 18. Public Revenue	Regulation 4508, <i>Appeal – Denial of License</i>
	Regulation 4701, <i>Appeal – Appeals Division</i>
	Regulation 4702, <i>Appeal – Board Hearing</i>
Title 18. Public Revenue	Regulation 4703, <i>Seizures and Forfeitures</i>
Title 18. Public Revenue	Regulation 4901, <i>Records</i>

cc (with attachments):

Ms. Diane Olson	(MIC: 80)
Mr. Randy Ferris	(MIC: 82)
Mr. Steve Smith	(MIC: 82)
Mr. Bradley Heller	(MIC: 82)
Ms. Carolee Johnstone	(MIC: 82)
Mr. Dave McKillip	(MIC: 63)
Ms. Lynn Bartolo	(MIC: 56)
Ms. Julia Findley	(MIC: 48)

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 2300, *Collection of Surcharge*

#### A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 2300 generally provides the criteria and procedures for collection of the energy resources surcharge under the Energy Resources Surcharge Law (part 19 (commencing with section 40001) of division 2 of the Revenue and Taxation Code). The State Board of Equalization (Board) hereby proposes to complete a textual reference to the Energy Resources Surcharge Law and to provide more specific statutory references in the reference note for Regulation 2300 under California Code of Regulations, title 1, section (Rule) 100.

The reference in the first paragraph of Regulation 2300 to the Energy Resources Surcharge Law, "Chapter 3, Part 19 of the Revenue and Taxation Code", is incomplete because it does not contain a reference to division 2. In addition, the reference note for Regulation 2300 cites the entire Energy Resources Surcharge Law, rather than the specific Revenue and Taxation Code sections being implemented, interpreted, or made specific by Regulation 2300. Accordingly, the Board proposes to amend Regulation 2300 to correct the citation in the text of the regulation and to provide more specific references for the regulation.

#### B. Proposed Amendment

##### Rule 100 Changes to Regulation 2300, *Collection of Surcharge*

Rule 100 changes are proposed to Regulation 2300 to: amend "Chapter 3, Part 19" in the first paragraph to read "Chapter 3 of Part 19 of Division 2"; and replace sections "40001-40191" with sections "40019, 40019.1, 40020, and 40045" in the reference note.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to provide a complete citation to the Energy Resources Surcharge Law in the text of Regulation 2300 and provide citations to the Revenue and Taxation Code sections being implemented, interpreted, or made specific in the reference note for Regulation 2300.

## **PROPOSED AMENDMENT**

Amend Regulation 2300 (Collection of Surcharge) to read as follows:

### **Regulation 2300. Collection of Surcharge.**

Every electric utility making sales of electrical energy to consumers in this state shall collect the surcharge from each consumer other than a consumer that is an electric utility or is exempt under Chapter 3, of Part 19 of Division 2 of the Revenue and Taxation Code, at the time it collects its billing from the consumer for the electrical energy sold. A consumer is any person receiving electrical energy furnished by an electric utility and includes a person receiving electrical energy for redistribution for the use of his tenants.

An electric utility may collect the surcharge on sales of electrical energy to another electric utility if the purchasing utility certifies in writing to the selling utility that all purchased electrical energy will be consumed by it in such a manner as to be subject to the surcharge, that all self-generated electrical energy will be sold to other electrical utilities without collection of the surcharge, and that purchased electrical energy will not be pooled with self-generated electrical energy.

For the purpose of the proper administration of this part, it shall be presumed that electrical energy sold by an electric utility in this state to other than an electric utility is consumed by the purchaser in this state until the contrary is established.

Whenever the rate of the surcharge is increased or decreased, the duty to collect the surcharge from a consumer at such new rate shall commence with the first regular billing period applicable to that consumer which begins on or after the effective date of the change of rate.

The surcharge required to be collected by the electric utility from the consumer shall be added to the charges to the consumer for the electrical energy sold. The amount of the surcharge may be stated separately. If the electric utility does not separately state the amount of the surcharge, the electric utility shall print on the billing a notice to the effect that the charges include energy resources surcharge computed at (applicable rate) mill per kilowatt-hour.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections ~~40001-40191~~40019, 40019.1, 40020, and 40045, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 2401, *Definitions*

#### A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 2401 generally provides definitions that apply to chapter 5.5 (commencing with Regulation 2401) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Emergency Telephone Users Surcharge Law (part 20 (commencing with section 41001) of division 2 of the Revenue and Taxation Code. The State Board of Equalization (Board) hereby proposes to update certain definitions contained in Regulation 2401 to make them consistent with changes to their statutory definitions, pursuant to California Code of Regulations, title 1, section (Rule) 100.

Statutes 2008, chapter 17 (Sen. Bill No. 1040), effective May 21, 2008, revised several provisions of the Emergency Telephone Users Surcharge Law, including Revenue and Taxation Code sections 41007 and 41016, which define the terms “service supplier” and “toll telephone service,” respectively. Accordingly, the Board proposes to amend the definition of “service supplier” and the relevant portion of the definition of “intrastate telephone communication services” in subdivisions (a) and (b) of Regulation 2401 to bring the definitions into conformity with the revised statutory definitions in Revenue and Taxation Code sections 41007 and 41016. The Board also proposes to add citations to Revenue and Taxation Code sections 41015 and 41016 to the reference note for Regulation 2401.

#### B. Proposed Amendments

##### Rule 100 Changes to Regulation 2401, *Definitions*

Rule 100 changes are proposed to Regulation 2401, subdivision (a), to

- Renumber the first part of subdivision (a) as subdivision (a)(1);
- Delete “any person supplying intrastate telephone communication services to any service user in this state, provided however:”;
- Replace the deleted language with both of the following: (A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1; and (B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1;
- Renumber current subdivision (a)(1) and (2) as subdivision (a)(2)(A) and (B), respectively; and
- Add “Notwithstanding paragraph (1):” to the beginning of subdivision (a)(2).

**Rule 100 changes are proposed to Regulation 2401, subdivision (b), to:**

- **Add “either a” between “includes” and “telephonic”;**
- **Add “for the service” after “a toll charge”;**
- **Replace “which varies in amount with the distance and elapsed transmission time” with “that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time,”;**
- **Replace “as well as” with “or”;**
- **Add a space between “transmission time),” and “to the privilege of”; and**
- **Add “a predetermined amount of units or dollars of telephonic communications or” after “the privilege of”.**

**In addition, Rule 100 changes are proposed to add citations to Revenue and Taxation Code sections 41015 and 41016 to the reference note for Regulation 2401.**

**The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Further, these changes are appropriate for processing under Rule 100 because they bring the regulation into conformity with statutory provisions that have been amended since the regulation was promulgated and the Board has no discretion to adopt definitions that are inconsistent with those provisions. Furthermore, these changes are necessary to correct punctuation and provide accurate citations to the references for Regulation 2401.**

## PROPOSED AMENDMENTS

Amend Regulation 2401 (Definitions) to read as follows:

### **Regulation 2401. Definitions.**

#### **(a) Service Supplier.**

(1) "Service Supplier" means ~~any person supplying intrastate telephone communication services to any service user in this state, provided however~~ both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

#### **(2) Notwithstanding paragraph (1):**

(A+) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B2) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either a telephonic quality communication for which there is a toll charge for the service which varies in amount with the distance and elapsed transmission time that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication, as well as <sup>(1)</sup> a service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

(c) **Billing Agent.** "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) **Billing Aggregator.** "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

(e) **Prepaid Telephone Calling Card.** "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

**Note:** Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41007, 41011, 41015, 41016, and 41021, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue

#### Regulation 3500, *Application of the Fee Collection Procedures Law*

#### Regulation 3502, *Relief from Liability*

#### A. Factual Basis

Chapter 8.5 of division 2 of title 18 of the California Code of Regulations contains regulations that implement, interpret, or make specific provisions of the Fee Collection Procedures Law (part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code). California Code of Regulations, title 18, section (Regulation) 3502 is contained in chapter 8.5. Regulation 3502 generally provides information about and a cross reference to criteria for seeking relief from liability for taxes or fees, interest, and penalties under the Fee Collection Procedures Law.

The second paragraph in Regulation 3502 lists the specific taxes and fees collected under the Fee Collection Procedures Law, but the other regulations in chapter 8.5 (Regulations 3501 and 3503) do not list the specific taxes and fees collected under the Fee Collection Procedures Law. Furthermore, the second paragraph of Regulation 3502 currently lists three taxes and fees that are collected pursuant to the Fee Collection Procedures Law: “the California Tire Fee, the Ballast Water Management Fee, and the Natural Gas Surcharge.” However, the list is not up to date because there are presently five taxes and fees that are collected pursuant to the Fee Collection Procedures Law, and the name of one of the fees currently listed – the Ballast Water Management Fee – has been changed to the “Marine Invasive Species Fee.” Accordingly, the State Board of Equalization (Board) hereby proposes to add a new regulation at the beginning of chapter 8.5, move the list in the second paragraph of Regulation 3502 into the new regulation, and update the list to reflect the specific taxes and fees currently collected under the Fee Collection Procedures Law under California Code of Regulations, title 1, section (Rule) 100. The new regulation will clarify that all of the regulations in chapter 8.5 (Regulations 3501, 3502, and 3503) apply to all of the taxes and fees collected under the Fee Collection Procedures Law.

#### B. Proposed Amendments

#### Rule 100 Changes to Add Regulation 3500 and Amend Regulation 3502, *Relief from Liability*

Rule 100 changes are proposed to:

- Add California Code of Regulations, title 18, section 3500, *Application of the Fee Collection Procedures Law*;
- Move the second paragraph of Regulation 3502, which lists the taxes and fees collected pursuant to the Fee Collection Procedures Law, into Regulation 3500; and
- Update Regulation 3500 so that it lists the California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, and



**Water Rights Fee, which are the taxes and fees currently collected pursuant to the Fee Collection Procedures Law.**

**The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to update the list of taxes and fees collected pursuant to the Fee Collection Procedures Law and clarify that all of the regulations in chapter 8.5 (Regulations 3501, 3502, and 3503) of division 2 of the California Code of Regulations apply to all of the taxes and fees collected under the Fee Collection Procedures Law.**

## **PROPOSED AMENDMENTS**

Add Regulation 3500 to read as follows:

### **Regulation 3500. Application of the Fee Collection Procedures Law.**

The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge, and Water Rights Fee.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 42464.2 and 42882, Public Resources Code; Section 893, Public Utilities Code, Section 44003, Revenue and Taxation Code; Section 1537, Water Code.

Amend Regulation 3502 (Relief from Liability) to read as follows:

### **Regulation 3502. Relief from Liability.**

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Fee Collection Procedures Law, Part 30, (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on written advice given by the board described in California Code of Regulations, Title 18, Section 4902.

~~The fees and taxes collected pursuant to the Fee Collection Procedures Law include the California Tire Fee, Ballast Water Management Fee, and Natural Gas Surcharge.~~

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Section 55045, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 4041, *Common Carrier Delivery Reports*

#### A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4041, pertaining to the Cigarette and Tobacco Products Tax, generally prescribes the reporting requirements for common carriers that deliver cigarettes shipped from outside this state to consignees in this state under the Cigarette and Tobacco Products Tax Law (part 13 (commencing with section 30001) of division 2 of the Revenue and Taxation Code). The State Board of Equalization (Board) hereby proposes to amend Regulation 4041 under California Code of Regulations, title 1, section (Rule) 100 to make the regulation consistent with common carriers' current statutory reporting requirements.

Regulation 4041 was initially adopted in 1958 to prescribe common carriers' reporting requirements under Revenue and Taxation Code section (section) 30454 in the Cigarette Tax Law and the last time it was amended was in 1968. In 1989, the Legislature revised "the Cigarette Tax Law to conform to the adoption of the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), by renaming that law the Cigarette and Tobacco Products Tax Law and by providing that reporting and tax collection requirements applicable to distributors of cigarettes shall also apply to distributors of tobacco products." (Digest for Statutes 1989, chapter 634.) As part of these revisions, section 30454 was amended to allow the Board to require the same reports from common carriers that deliver tobacco products shipped from outside this state to consignees in this state as are required from common carriers that deliver cigarettes. The Board now proposes to amend Regulation 4041 to make it consistent with section 30454.

Further, Revenue and Taxation Code section 30186, pertaining to report of sales by a common carrier, was amended effective January 1, 2003, to add a provision that the report should be "in the form as prescribed by the board, which may include, but not be limited to, electronic media." The Board proposes to add similar language regarding electronic media to the existing language in the last paragraph of Regulation 4041 to make it consistent with section 30186.

In addition, the Board proposes to add authority and reference notes to Regulation 4041 containing citations to Revenue and Taxation Code section 30451, the "authority," and sections 30186 and 30454, the "references," for Regulation 4041.

#### B. Proposed Amendments

##### Rule 100 Changes to Regulation 4041, *Common Carrier Delivery Reports*

Rule 100 changes are proposed to Regulation 4041 to:

- Add a comma after “State” and add “or tobacco products” after “delivery of the cigarettes” in the first part of the regulation;
- Add a comma after “cigarettes delivered”, delete “and” before “the quantity of cigarettes”, and add “, and the quantity of tobacco products delivered,” after “contained therein” in subdivision (d) of the regulation; and
- Add “the board, which may include, but not be limited to, electronic media,” after “prescribed by” in the last sentence of the regulation.

Rule 100 changes are also proposed to add authority and reference notes containing citations to Revenue and Taxation Code section 30451, the authority, and sections 30186 and 30454, the references, for Regulation 4041.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Further, these changes are appropriate for processing under Rule 100 because they bring the regulation into conformity with statutory provisions that were revised since the regulation was last amended. Furthermore, the changes are necessary to provide current citations to the authority and reference for Regulation 4041.

## PROPOSED AMENDMENTS

Amend Regulation 4041 (Common Carrier Delivery Reports) to read as follows:

### **Regulation 4041. Common Carrier Delivery Reports.**

Every common carrier making a delivery of cigarettes to a consignee in this State, the shipment of which originated outside this State, shall report to the board not later than the 25th day of the calendar month following the calendar month in which the delivery of the cigarettes or tobacco products was made, the following information concerning the shipment:

- (a) the name of the shipper and the point of origin;
- (b) the name of the consignee and the address to which delivered;
- (c) the date and number of the waybill covering the shipment;
- (d) the number of cases, bales or other containers of cigarettes delivered, ~~and the quantity of cigarettes contained therein, and the quantity of tobacco products delivered,~~ as shown by the shipping documents; and
- (e) in the case of rail shipments, the car initials and number; and
- (f) in the case of water shipments, the name of the vessel and the number of the steamship bill of lading.

B

This report shall be made on a form prescribed by the board, which may include, but not be limited to, electronic media, and filed with the board at Sacramento.

B

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30186 and 30454, Revenue and Taxation Code.

# CHANGE WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 4500, *Definitions*

#### A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4500 generally provides the definitions that apply to chapter 9 (commencing with Regulation 4500) of division 2 of title 18 of the California Code of Regulations, which prescribes the application of the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). The State Board of Equalization (Board) hereby proposes to correct a citation in the reference note for Regulation 4500 under California Code of Regulations, title 1, section (Rule) 100.

The term “person” is defined in both Business and Professions Code section 22971, subdivision (n), and Revenue and Taxation Code section 30010. In Regulation 4500, subdivision (s), the definition of “person,” refers to Revenue and Taxation Code section 30010, not Business and Professions Code section 22971, subdivision (n). The reference note for Regulation 4500 contains a typographical error that inadvertently combines the citations to the Business and Professions Code and the Revenue and Taxation Code and cites “Section 22971(n), Revenue and Taxation Code.”

Accordingly, the Board proposes to amend the reference note for Regulation 4500.

#### B. Proposed Amendment

##### Rule 100 Change to Regulation 4500, *Definitions*

A Rule 100 change is proposed to replace the citation to “Section 22971(n), Revenue and Taxation Code” with a citation to “Section 30010, Revenue and Taxation Code” to correct the typographical error in the reference note for Regulation 4500.

The foregoing change is appropriate for processing under Rule 100 because it is a change without regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the change is necessary to provide the correct citation to one of the statutory references for Regulation 4500.

## **PROPOSED AMENDMENT**

Amend Regulation 4500 (Definitions) to read as follows:

### **Regulation 4500. Definitions.**

In addition to the definitions in Business and Professions Code section 22971, the following definitions shall apply to this chapter:

- (a) "Act" means the Cigarette and Tobacco Products Licensing Act of 2003, set forth in division 8.6 of the Business and Professions Code.
- (b) "Appeals Division staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.
- (c) "Applicant" means a retailer, wholesaler, distributor, importer or manufacturer who has applied for a license pursuant to the Act, and, if the retailer, wholesaler, distributor, importer or manufacturer is not an individual, the term includes any person controlling such entity.
- (d) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.
- (e) "Board" means the Board Members of the State Board of Equalization meeting as a body or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.
- (f) "Board Proceedings Division staff" means an employee or employees of the State Board of Equalization assigned to the Board Proceedings Division of the Legal Department.
- (g) "Business" means a business operated by a licensee and/or the property upon which or location at which such licensed business is operated.
- (h) "Citation" means a civil notice of violation(s) or a criminal misdemeanor notice to appear.
- (i) "Control" or "controlling" means control or controlling as defined in Business and Professions Code section 22971, subdivision (p).
- (j) "Conviction" means a judgment of guilt of a criminal offense.
- (k) "Excise Taxes Division staff" means an employee or employees of the State Board of Equalization assigned to the Excise Taxes Division of the Property and Special Taxes Department.
- (l) "Finding" or "Findings" means a determination that a violation of the Act has occurred. This can occur by default if no appeal is made from a Notice of Violation or Warning Notice, or by a final decision made pursuant to Regulations 4700, 4701, or 4702.
- (m) "Fine" means any fine imposed by the Board pursuant to the Act.

(n) "Investigations Division staff" means an employee or employees of the State Board of Equalization assigned to the Investigations Division of the Legal Department.

(o) "Licensee" means a licensee as defined in Business and Professions Code section 22971, subdivision (j).

(p) "License subject to a civil or criminal citation" means a license as to which a citation has been issued but no final determination of violation has yet been entered into the licensee's or unlicensed person's permanent record.

(q) "Notice of Violation" means the document sent to a licensee or unlicensed person referring to the citation issued, the charged violation(s), the penalty or penalties to be imposed, and the licensee's or unlicensed person's appeal rights.

(r) "Offense" means a criminal conviction of violations of the Act and/or civil findings of violations of the Act.

(s) "Person" means a person as defined in Revenue and Taxation Code section 30010.

(t) "Regulation" means a section of title 18 of the California Code of Regulations.

(u) "Unlicensed Person" means any person not holding a valid license issued by the Board pursuant to the Act.

(v) "Warning Notice" means the document advising a licensee or unlicensed person that the stated violation(s) of the Act will be entered into the licensee's or unlicensed person's permanent record as a first offense and that future violations will result in civil penalties.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22970, 22971, 22974.5, 22978.7 and 22979.7, Business and Professions Code; and Section ~~22971(n)~~30010, Revenue and Taxation Code.



# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue

Regulation 4508, *Appeal – Denial of License*  
Regulation 4701, *Appeal – Appeals Division*  
Regulation 4702, *Appeal – Board Hearing*

#### **A. Factual Basis**

California Code of Regulations, title 18, sections (Regulations) 4508, 4701, and 4702 generally provide the rules applicable to appeals of the State Board of Equalization's (Board) actions under the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). These regulations reference rules for appeals that were contained in the Rules of Practice<sup>1</sup> (Cal. Code Regs., tit. 18, § 5010 et seq.), which has since been repealed. The Board hereby proposes to replace the references to the repealed Rules of Practice in Regulations 4508, 4701, and 4702 under California Code of Regulations, title 1, section (Rule) 100.

The Rules of Practice were originally adopted to prescribe the general rules for appeals of Board actions and were repealed effective February 6, 2008. Regulations 4508, 4701, and 4702 were adopted on December 12, 2006, and effective April 21, 2007. As a result, Regulations 4508, 4701, and 4702 refer to Regulations 5023, 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087 of the Rules of Practice, which were then in effect. Regulation 5023 prescribed the Board's procedures for conducting appeals conferences and the other regulations referenced prescribed the Board's procedures for conducting Board hearings, including:

- Definitions (Regulation 5070);
- The quorum requirements (Regulation 5072);
- Representation at hearings and powers of attorney (Regulation 5073);
- The consolidation of appeals for hearings or decisions (Regulation 5074);
- The timeliness of documents (Regulation 5074.5);
- The briefing process (Regulation 5075);
- The requirements for scheduling and noticing hearings (Regulation 5076);
- The time allocated for hearings (Regulation 5077);
- The scope of hearings (Regulation 5078);
- The hearing procedures (Regulation 5079);
- The burden of proof (Regulation 5080);
- The decision and voting procedures (Regulation 5081);
- Notice of the Board's decision (Regulation 5081.2);
- The finality of decisions and petition for rehearing procedures (Regulation 5082);
- Filing fees and charges for transcripts (Regulation 5083);

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<sup>1</sup> The repealed Rules of Practice are attached for ease of reference.

- Public records of hearings (Regulation 5085);
- The issuance of subpoenas (Regulation 5086); and
- The withdrawal of exhibits (Regulation 5087).

Subsequently, the Board adopted the Rules for Tax Appeals (division 2.1 (commencing with section 5000) of title 18 of the California Code of Regulations), which contain more comprehensive rules for appeals of Board actions, and repealed the prior Rules of Practice, effective February 6, 2008. Accordingly, the Board proposes to replace the references to the repealed Rules of Practice in Regulations 4508, 4701, and 4702 with references to the corresponding provisions in the current Rules for Tax Appeals. The Board also proposes to correct an internal cross reference in subdivision (c) of Regulation 4701.

The Board has determined that the repealed Rules of Practice correspond to the new Rules for Tax Appeals as follows:

#### Rules of Practice

#### Rules for Tax Appeals

1. Regulation 5023	Regulations 5260-5268, and 5523.4
2. Regulation 5070	Regulations 5511 and 5512
3. Regulation 5072	Regulation 5550
4. Regulation 5073	Regulations 5523 and 5523.1
5. Regulation 5074	Regulation 5522.4
6. Regulation 5074.5	Regulation 5571
7. Regulation 5075	Regulations 5270 and 5271
8. Regulation 5076	Regulation 5522.6 and 5522.8
9. Regulation 5077	Regulation 5523.5, subdivisions (c) - (e)
10. Regulation 5078	Regulation 5523.5, subdivision (a)
11. Regulation 5079	Regulations 5523.6 and 5523.7
12. Regulation 5080	Regulation 5541
13. Regulation 5081	Regulation 5551
14. Regulation 5081.2	Regulation 5560, subdivision (a)
15. Regulation 5082	Regulations 5560, subdivision (b), 5561, 5562, and 5563
16. Regulation 5083	Regulations 5576
17. Regulation 5085	Regulation 5572
18. Regulation 5086	Regulation 5523.5, subdivision (b)
19. Regulation 5087	No corresponding provision.

#### **B. Proposed Amendments**

##### 1. Rule 100 Changes to Regulation 4508, *Appeal—Denial of License*

Rule 100 changes are proposed to Regulation 4508 to:

- Replace the reference to “Regulation 5023” in subdivision (c) with a reference to “article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations”;
- Replace the references to “Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087” in subdivision (c) with references to “Regulations

- 5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576”; and
- Replace the reference to Regulation “5082” in subdivision (d) with a reference to Regulation 5560, subdivision (b).

## **2. Rule 100 Changes to Regulation 4701, *Appeal—Appeals Division***

Rule 100 changes are proposed to Regulation 4701 to:

- Replace the reference to “Regulation 5023” with a reference to “article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations” in subdivision (b); and
- Add “s (e) and” following “set forth in subdivision” in subdivision (c).

## **3. Rule 100 Changes to Regulation 4702, *Appeal—Board Hearing***

A Rule 100 change is proposed to Regulation 4702, subdivision (b), to replace the references to “Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087” with references to “Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.”

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes to Regulations 4508, 4701, and 4702 are necessary to replace the references to the repealed Rules of Practice with the corresponding references to the current Rules for Tax Appeals.

## PROPOSED AMENDMENT

### 1. Amend Regulation 4508 (Appeal – Denial of License) to read as follows:

#### **Regulation 4508. Appeal - Denial of License.**

(a) If the Excise Taxes Division determines that a new license should not be issued pursuant to Regulation 4503, then it shall notify the applicant of such determination and deny the application for issuance of a new license for the applicant's business. The applicant may petition for a redetermination within 30 days from the date notice of the denial is mailed or personally delivered to the applicant. The denial of the application shall become final if a petition for redetermination is not filed before the expiration of the 30-day period.

(b) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded.

(c) The Board shall reconsider the determination of the Excise Taxes Division pursuant to its administrative appeals process set forth in Regulation 5023 article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087 Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.

(d) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the applicant, except as provided in Regulation 5560, subdivision (b) Regulation 5082.

(e) Any notice required by this section shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the applicant's last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, notice may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.

### 2. Amend Regulation 4701 (Appeal – Appeals Division) to read as follows:

#### **Regulation 4701. Appeal - Appeals Division.**

(a) Request for Appeals Conference. The Request for Appeals Conference shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice, Notice of Violation, or Notice of First Decision, and shall be accompanied by any and all documentation and written argument to be considered in the appeal. The Request for Appeals Conference shall be signed by the licensee or unlicensed person or by an authorized representative.

(b) Conference. Upon receipt of a Request for Appeals Conference, a conference will be scheduled and held as set forth in ~~Regulation 5023~~ article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations, unless otherwise provided herein. The conference shall allow a licensee or unlicensed person an opportunity to show cause why the Warning Notice, Notice of Violation, or Notice of First Decision, and the penalty or penalties imposed therein, should not be upheld.

(1) The conference will be held by telephone and shall be recorded by the Appeals Division. A licensee or unlicensed person may request a copy or transcript of the recording, at his or her expense.

(2) The Appeals Division may grant a request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief Counsel or his or her designee approves of a later date.

(3) During a conference, the Appeals Division may grant a request for additional time to submit additional evidence. If such additional time is granted, the evidence shall be submitted to the Appeals Division no later than 7 days after the conference date.

(c) Decision. The Appeals Division shall issue a Notice of Second Decision following the conference. The Notice of Second Decision will set forth the Appeals Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights, if any, as set forth in subdivisions (e) and (f) below.

(d) No later than 35 days after the Notice of Second Decision is issued, the Appeals Division may, in its sole discretion, issue a Notice of Second Decision - Reconsideration to correct any mistakes of law and/or facts.

(e) A Notice of Second Decision or Notice of Second Decision - Reconsideration that upholds a penalty of revocation and/or a fine of more than \$2,500 may be appealed by timely filing a Request for Board Hearing. A Notice of Second Decision or Notice of Second Decision - Reconsideration that upholds a penalty of suspension and/or a fine of \$2,500 or less is final and may not be appealed further.

(f) Failure to File. When applicable, a Request for Board Hearing must be filed within 10 days of the date the Notice of Second Decision is mailed or personally delivered to the licensee or unlicensed person. If a Request for a Board Hearing is not filed within the 10-day period, then the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Notice of Second Decision, and the penalty or penalties stated therein, shall become final. If a hearing is not requested or is waived, then official notice of the Board's action on the appeal will be mailed to the licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

3. Amend Regulation 4702 (Appeal – Board Hearing) to read as follows:

**Regulation 4702. Appeal - Board Hearing.**

(a) Request for Board Hearing. The Request for Board Hearing shall:

(1) State the specific grounds upon which the licensee or unlicensed person is contesting the Notice of Violation or Notice of Second Decision;

(2) State whether an oral hearing is requested;

(3) Be accompanied by any and all documentation and written argument to be considered in support of the licensee's or unlicensed person's contentions; and

(4) Be signed by the licensee or unlicensed person or by an authorized representative.

(b) When applicable, upon receipt of the Request for Board Hearing, a Board hearing shall be scheduled and conducted in accordance with the procedures as set forth in ~~Regulations 5070, 5072 through 5075, 5076, 5077 through 5082, and 5083 through 5087~~ Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4, through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576, to allow the licensee or unlicensed person an opportunity to show cause why the Notice of Violation or Notice of Second Decision, and the penalty or penalties imposed therein, should not be upheld. Following the Board hearing, a Notice of Board Decision will be mailed to the licensee or unlicensed person.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 4703, *Seizures and Forfeitures*

#### A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 4703 generally provides the criteria and procedures for seizures and forfeitures of cigarettes and tobacco products under the Cigarette and Tobacco Products Licensing Act (division 8.6 (commencing with section 22970) of the Business and Professions Code). The State Board of Equalization (Board) hereby proposes to make minor corrections to the text and a subdivision heading in Regulation 4703 under California Code of Regulations, title 1, section (Rule) 100.

Within Regulation 4703, the term “Board” is used 15 times throughout to refer to the State Board of Equalization. The term “Investigations Division” is used one time to refer to the State Board of Equalization, in paragraph (2) of subdivision (b). The term “Investigations Division” is inconsistent with the use of the term “Board” throughout the rest of regulation and should be replaced with the term “Board” to make the subdivision consistent with the rest of the regulation. In subdivision (c), a comma is needed after “paid” and before “when the owner”, and, in paragraph (3) of subdivision (c), the “b” in “board” should be capitalized to make it consistent with the 14 other references to the “Board.” Lastly, the heading for subdivision (d) needs to be revised to reflect its content. Accordingly, the Board proposes to amend Regulation 4703 to replace the reference to the “Investigations Division,” capitalize the first letter in “board,” correct two punctuation errors, and to revise the heading of subdivision (d) to be consistent with its content.

#### B. Proposed Amendments

##### Rule 100 Changes to Regulation 4703, *Seizures and Forfeitures*

Rule 100 changes are proposed to:

- Replace the term “Investigations Division” in paragraph (2) of subdivision (b) with “Board”;
- Insert a comma after “paid” in subdivision (c);
- Replace “board” with “Board” in paragraph (3) of subdivision (c); and
- Replace “Evidence Required for Recovery of Product” with “Evidence Relevant to Recovery of Product” as the heading for subdivision (d) of Regulation 4703.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to correct reference, syntax, and punctuation errors in Regulation 4703.

## **PROPOSED AMENDMENTS**

Amend Regulation 4703 (Seizures and Forfeitures) to read as follows:

### **Regulation 4703. Seizures and Forfeitures.**

(a) Seizures. The seizure of cigarette and tobacco products is authorized under the Cigarette and Tobacco Products Licensing Act Law and the Cigarette and Tobacco Products Tax Law.

(b) Seizure of Untaxed Products.

(1) In the absence of an applicable exemption from tax or other lawful possession of unstamped product under Revenue and Taxation Code (e.g., Revenue and Taxation Code sections 30102 through 30106 or 30431), the Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products that cannot be sold legally in California, including, but not limited to the following:

(A) Cigarette packages without any cigarette tax stamp that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(B) Cigarette packages with another state's tax stamp or the stamp of another taxing jurisdiction that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(C) Cigarette packages with a California tax stamp affixed and marked "Not for sale in the United States," "For Export Only" or similar wording indicating the manufacturer did not intend the product to be sold in the United States, that are possessed, stored, owned by a retailer, wholesaler, distributor, manufacturer importer, or any other person.

(D) Tobacco products for which the California excise tax is due but has not been paid that are possessed, stored, owned, or for sale by a retailer, wholesaler or any other person except when possessed by a licensed distributor.

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized by the ~~Investigations Division~~Board or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) Petition Procedure. The Board's seizure of such products as described under subsection (b) shall comply with the procedures set forth in Revenue and Taxation Code, Division 2, Part 13, Chapter 7.5, commencing with section 30435.

(A) An owner or any person owning an interest in the seized property may file a petition with the Board to request recovery of the seized property as permitted by Revenue and Taxation Code section 30438.

(B) The petitioner has the burden of proving in the petition that the seized cigarettes and/or tobacco products are legal to possess, store, own or sell and that taxes have been paid to obtain the recovery of the seized product(s).



(c) **Seizure of Product From Persons Without a Valid License.** The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid, when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

**(1) Unlicensed Persons.**

(A) Stamped cigarettes that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, manufacturer, importer, or any other person after notice by the Board or a law enforcement agency.

(B) Tobacco products for which the California excise tax has been paid, that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, or any other person after notice by the Board or a law enforcement agency.

**(2) Persons with Suspended or Revoked Licenses.**

(A) Stamped or unstamped cigarettes offered for sale at the time of seizure by a retailer, distributor, wholesaler, manufacturer or importer with a suspended or revoked license after notice by the Board of the suspension or revocation.

(B) Tobacco products, regardless of whether the California excise taxes have been paid, that are offered for sale at the time of seizure by a retailer, distributor or wholesaler with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) **Forfeiture.** Any cigarettes and tobacco products seized by the ~~board~~Board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

(4) **Petition Procedure.** The petitioner may file a petition to contest the citation(s) resulting in the suspension or revocation of the license issued under the Cigarette and Tobacco Products Licensing Act Law pursuant to Article 5 of these regulations.

(d) **Evidence ~~Required For~~Relevant to Recovery of Product.** Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

(1) The cigarette packages had valid California tax stamps affixed and the petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(2) The cigarette packages had valid California tax stamps affixed and the petitioner was not operating at the time of seizure with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) The cigarette packages without California tax stamps affixed were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

**(4) Cigarette packages that bear another state's tax stamp or the stamp of another taxing jurisdiction were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.**

**(5) Cigarette packages without a California tax stamp affixed and marked "Not for sale in the United States" or similar wording indicating that the manufacturer did not intend the product to be sold in the United States were in the possession of a distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law and intended for sale outside of California at the time of seizure.**

**(6) The petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law and the tax was paid for the seized tobacco products at the time of seizure.**

**(7) The petitioner was not operating with a suspended or revoked license after notice by the Board of the suspension or revocation and the tax was paid for the seized tobacco products at the time of seizure.**

**(8) The untaxed tobacco products were in the possession of a tobacco products distributor with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.**

**(e) Counterfeit Products. Counterfeit cigarette and tobacco products are defined as those with false manufacturing labels or false or fraudulent stamps, or both false labels and false stamps.**

**(1) The Board shall be authorized to seize counterfeit cigarette and tobacco products that are possessed, stored, owned or for sale by a retailer, distributor, wholesaler, manufacturer, importer, or any other person.**

**(2) The Board is not authorized to return seized counterfeit cigarettes and tobacco products as defined in this part as such products are illegal under California law.**

**(f) Additional grounds for seizure. The California Cigarette and Tobacco Products Tax Law at Revenue and Taxation Code section 30436 sets forth additional circumstances under which cigarettes or tobacco products may be seized by the Board and forfeited to the state.**

**Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22971(l) and (m), 22974.3(a) and (b), 22978.2(a) and (b) and 22980.2(c), Business and Professions Code; and Sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Revenue and Taxation Code.**

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenue Regulation 4901, *Records*

#### A. Factual Basis

Chapter 9.9, Special Taxes Administration – Miscellaneous, of division 2 of title 18 of the California Code of Regulations contains regulations that implement, interpret, or make specific provisions of the Revenue and Taxation Code that are common to a number of Board administered special taxes and fees. California Code of Regulations, title 18, section (Regulation) 4901 is contained in chapter 9.9. Regulation 4901 generally prescribes the records taxpayers and fee payers must maintain and make available to the State Board of Equalization (Board) for inspection under provisions of specified special taxes and fees, which the regulation refers to as “Applicable Tax Laws.”

Regulation 4901, subdivision (a)(1), contains the definition of “Applicable Tax Laws,” and lists the specific special taxes and fees that are included in the definition. Regulation 4901, subparagraphs (a)(1)(C), (D), and (M) refer to the Ballast Water Management Fee, California Tire Fee, Natural Gas Surcharge as applicable tax laws, respectively. This is because:

- The Board administers all three of the fees under the Fee Collection Procedures Law (Rev. & Tax. Code, § 55001 et seq.);
- Revenue and Taxation Code section 55301 authorizes the Board to prescribe, adopt, and enforce rules and regulations that implement, interpret, and make specific the provisions of the Fee Collection Procedures Law;
- Revenue and Taxation Code section 55302 authorizes the Board to examine fee payers’ books and records as necessary to carry out the provisions of the Fee Collection Procedures Law; and
- Regulation 4901 prescribes the records fee payers must maintain and make available to the Board for inspection under Revenue and Taxation Code section 55302.

Since Regulation 4901 was adopted in 2003, two new special fees have been enacted – the Water Rights Fee (Wat. Code, § 1525 et seq.), effective January 1, 2004, and the Covered Electronic Waste Recycling Fee (Pub. Resources Code, § 42464 et seq.), effective January 1, 2004. The Board administers both of these fees under the provisions of the Fee Collection Procedures Law, including Revenue and Taxation Code section 55302. Accordingly, the Board hereby proposes to add the Water Rights Fee and the Covered Electronic Waste Recycling Fee to the list of “Applicable Tax Laws” in Regulation 4901, subdivision (a)(1), to clarify that Regulation 4901 also applies to these two special fees.

In addition, the Ballast Water Management Fee was renamed the Marine Invasive Species Fee effective January 1, 2004. Therefore, the Board also proposes to replace “Ballast Water

Management Fee” with “Marine Invasive Species Fee” in Regulation 4901, subdivision (a)(1)(C).

**B. Proposed Amendments**

**Rule 100 Changes to Amend Regulation 4901, *Records***

Rule 100 changes are proposed to add Water Rights Fee and Covered Electronic Waste Recycling Fee to Regulation 4901, subdivision (a)(1), and to replace “Ballast Water Management Fee” with “Marine Invasive Species Fee” in Regulation 4901, subdivision (a)(1)(C) so that the list of special taxes and fees to which Regulation 4901 applies is current.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to update the list of taxes and fees to which Regulation 4901 applies.

## **PROPOSED AMENDMENTS**

Amend Regulation 4901 (Records) to read as follows:

### **Regulation 4901. Records.**

#### **(a) Definitions.**

(1) "Applicable Tax Laws" means any of the following:

(A) Aircraft Jet Fuel Tax, Revenue and Taxation Code Sections 7385-7398, 7486-8406;

(B) Alcoholic Beverage Tax, Revenue and Taxation Code Sections 32001-32557;

(C) ~~Ballast Water Management Fee~~ Marine Invasive Species Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;

(D) California Tire Fee, Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381;

(E) Childhood Lead Poisoning Prevention Fee, Health and Safety Code Section 105310; Revenue and Taxation Code Sections 43001-43651;

(F) Cigarette and Tobacco Products Tax, Revenue and Taxation Code Sections 30001-30481;

(G) Diesel Fuel Tax, Revenue and Taxation Code Sections 60001-60709;

(H) Emergency Telephone Users Surcharge, Revenue and Taxation Code Sections 41001-41176;

(I) Energy Resources Surcharge, Revenue and Taxation Code Sections 40001-40216;

(J) Hazardous Substances Tax, Health and Safety Code Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code Sections 43001-43651;

(K) Integrated Waste Management Fee, Public Resources Code Sections 40000-48008; Revenue and Taxation Code Sections 45001-45984;

(L) Motor Vehicle Fuel Tax, Revenue and Taxation Code Sections 7301-8526;

(M) Natural Gas Surcharge, Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381;

(N) Occupational Lead Poisoning Prevention Fee, Health and Safety Code Section 105190; Revenue and Taxation Code Sections 43001-43651;

(O) Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001-46751;

**(P) Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Sections 50101-50162;**

**(Q) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355;**

**(R) Covered Electronic Waste Recycling Fee, Health and Safety Code Sections 25214.9-25214.10.2; Public Resources Code Sections 42460-42486; Revenue and Taxation Code Sections 55001-55381;**

**(S) Water Rights Fee, Water Code Sections 1525-1552, 13050, 13160.1; Revenue and Taxation Code Sections 55001-55381.**

**(2) . . . (unchanged).**

**(3) . . . (unchanged).**

**(4) . . . (unchanged).**

**(5) . . . (unchanged.)**

**(6) . . . (unchanged).**

**(7) . . . (unchanged).**

**(b) General. . . (unchanged).**

**(c) Machine-Sensible Records. . . (unchanged).**

**(d) Machine-Sensible Records Maintenance Requirements. . . (unchanged).**

**(e) Access to Machine-Sensible Records. . . (unchanged).**

**(f) Taxpayer Responsibility and Discretionary Authority. . . (unchanged).**

**(g) Hardcopy Records. . . (unchanged).**

**(h) Alternative Storage Media. . . (unchanged).**

**(i) Record Retention – Time Period. . . (unchanged).**

**(j) Record Retention Limitation Agreements. . . (unchanged).**

**(k) Failure to Maintain Records. . . (unchanged).**

**Note: Authority cited: Sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605 and 60606, Revenue and Taxation Code.**

**Wednesday January 27, 2010**

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **SALES AND USE TAX APPEALS HEARING**

John Henry Darral Steinhauer, 458651, 459600 (KH)

7-1-04 to 6-30-07, \$139,115.11 Disputed Amount

For Petitioner/Claimant:

Jesse W. McClellan, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that his claimed nontaxable labor charges or any of the sales reported as taxable on his returns for the audit period were, in fact, nontaxable.

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days—with flexibility—to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

### **CHIEF COUNSEL MATTERS**

#### **RULEMAKING**

#### **Specified Special Tax and Fee Regulations**

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to add or amend specified regulations pertaining to the Energy Resources Surcharge Law, the Fee Collection Procedures Law; the Emergency Telephone Users Surcharge Law; the Cigarette and Tobacco Products Tax Law; the Cigarette and Tobacco Products Licensing Act, the Fee Collection Procedures Law, and the general administration of special taxes. (Exhibit 1.3.)

Mr. Heller reported a revision to correct a reference in Regulation 4500, subdivision (e), from article XIII, section 9, of the California Constitution, to article XIII, section 17.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to specified special tax and fee regulations with the revision as recommended by staff.

Exhibits to these minutes are incorporated by reference.

BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 2300

REASON FOR CHANGE (check those applicable)

- ☐ renumbering, reordering, or relocating regulatory provision
- ☐ deleting regulatory provision for which all statutory or constitutional authority has been repealed
- ☐ deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court
- ☒ revising structure, syntax, cross-reference, grammar, or punctuation
- ☐ changing an "authority" or "reference" citation
- ☒ making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal

**Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.**

Prepared by Robert Zivkovich Date 1/19/2010

Approvals  
Division Chief Dyann Bartelo Date 1/19/2010

Deputy Director Dyann Bartelo for DJG Date 1/19/2010

Assistant Chief Counsel Randy Fagan Date 1/19/10

Chief Counsel Kristine Agard Date 1/20/10

Chief, Board Proceedings Deane G. Olson Date 1/20/10

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.



BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 2401

REASON FOR CHANGE (check those applicable)

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Prepared by Robert Zivkovich Date 1/19/2010

Approvals  
Division Chief Ryan Bartolo Date 1/19/2010

Deputy Director Ryan Bartolo for DTG Date 1/19/2010

Assistant Chief Counsel Ruby F... Date 1/19/10

Chief Counsel Kristine Cazadd Date 1/20/10

Chief, Board Proceedings Diane G. Olson Date 1/20/10

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.

BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 3502

REASON FOR CHANGE (check those applicable)

- ☐ renumbering, reordering, or relocating regulatory provision
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Prepared by Robert Zivkovic Date 1/19/2010

Approvals  
Division Chief Supra Bartolo Date 1/19/2010

Deputy Director Supra Bartolo for DTG Date 1/19/2010

Assistant Chief Counsel R. J. F. Date 1/19/10

Chief Counsel Kristine Cazadd Date 1/20/10

Chief, Board Proceedings Marie G. Brown Date 1/20/10

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.

BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 4041

REASON FOR CHANGE (check those applicable)

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Prepared by Ronnie Zivkovien Date 1/19/2010

Approvals  
Division Chief Alex Bartolo Date 1/19/2010  
Deputy Director Alex Bartolo for DTR Date 1/19/2010  
Assistant Chief Counsel Andy T... Date 1/19/10  
Chief Counsel Kristen Agard Date 1/20/10  
Chief, Board Proceedings Marie Q. Chon Date 1/20/10

**INSTRUCTIONS:**

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BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 4500

REASON FOR CHANGE (check those applicable)

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Prepared by ROBERT ZIVKARIC Date 1/19/2010

Approvals		
Division Chief	<u>[Signature]</u>	Date <u>1/19/2010</u>
Deputy Director	<u>[Signature]</u>	Date <u>1/19/2010</u>
Assistant Chief Counsel	<u>[Signature]</u>	Date <u>1/19/10</u>
Chief Counsel	<u>[Signature]</u>	Date <u>1/20/10</u>
Chief, Board Proceedings	<u>[Signature]</u>	Date <u>1/20/10</u>

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BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 4508

REASON FOR CHANGE (check those applicable)

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Prepared by Robert Zirkorian Date 1/19/2010

Approvals  
Division Chief [Signature: Guy Bartolo] Date 1/19/2010

Deputy Director [Signature: Guy Bartolo for DTG] Date 1/19/2010

Assistant Chief Counsel [Signature: D. L. F.] Date 1/19/10

Chief Counsel [Signature: Kristine Agard] Date 1/20/10

Chief, Board Proceedings [Signature: Anne G. Olson] Date 1/20/10

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.

BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 4701

REASON FOR CHANGE (check those applicable)

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- ☐ changing an "authority" or "reference" citation
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Prepared by Robert Zivkovic Date 1/19/2010

Approvals  
Division Chief Alynn Bartolo Date 1/19/2010

Deputy Director Alynn Bartolo for DTB Date 1/19/2010

Assistant Chief Counsel [Signature] Date 1/19/10

Chief Counsel Kristine Agzadd Date 1/20/10

Chief, Board Proceedings Diane G. Olson Date 1/20/10

**INSTRUCTIONS:**

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BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 4702

REASON FOR CHANGE (check those applicable)

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Prepared by Robert Zivkarcu Date 1/19/2010

Approvals  
Division Chief Supan Bartolo Date 1/19/2010

Deputy Director Supan Bartolo Date 1/19/2010

Assistant Chief Counsel [Signature] Date 1/19/10

Chief Counsel Kristine Cazadd Date 1/20/10

Chief, Board Proceedings [Signature] Date 1/20/10

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.

BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 4703

REASON FOR CHANGE (check those applicable)

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Prepared by Robert Zivkovic Date 1/19/2010

Approvals  
Division Chief Rupen Bartolo Date 1/19/2010

Deputy Director \_\_\_\_\_ Date \_\_\_\_\_

Assistant Chief Counsel [Signature] Date 1/19/10

Chief Counsel Kristine Cazadd Date 1/20/10

Chief, Board Proceedings Dan G. Olson Date 1/20/10

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.



BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 4901

REASON FOR CHANGE (check those applicable)

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Prepared by Robert Zivkovic Date 1/19/2010

Approvals  
Division Chief Ryan Bartolo Date 1/19/2010

Deputy Director Ryan Bartolo Date 1/19/2010

Assistant Chief Counsel Rahm Feroz Date 1/19/10

Chief Counsel Kristen Gazedd Date 1/20/10

Chief, Board Proceedings Diane Gabler Date 1/20/10

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

JANUARY 27, 2010

ITEM J1

CHIEF COUNSEL MATTERS

RULEMAKING

SECTION 100 CHANGES

Reported by: Beverly D. Toms

No. CSR 1662

## P R E S E N T

For the Board  
of Equalization:

Betty Yee  
Chair

Jerome E. Horton  
Vice-Chair

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane Olson  
Chief, Board  
Proceedings Division

Board of Equalization  
Staff:

Bradley Heller  
Legal Department

Carolee Johnstone  
Legal Department

---oOo---

Sacramento, California

January 27, 2010

---oOO---

MS. OLSON: The next matter is J1, Specified  
Special Tax and Fee Regulations.

MS. YEE: Okay. Good morning, Mr. Heller.

MR. HELLER: Good morning, Madam Chair, Members  
of the Board. I'm Bradley Heller. I'm here with  
Carolee Johnstone. We're both attorneys in the Legal  
Department. And for this item we're requesting the  
Board's authorization to complete Rule 100 changes to a  
number of specified Special Taxes and Fees regulations.

And I did also want to point up -- or bring up  
an additional change that we're recommending.

Our Regulation 4500, Subdivision "e" basically  
defines the term "Board" and after we submitted the  
package to the Board we realized that that subdivision  
references -- or defines the Board by reference to the  
California Constitution and it refers to the wrong  
section in Article XIII. So we wanted to amend  
Subdivision "e" of 45 -- section -- of Regulation 4500  
so that it refers to Article XIII, Section 17 which  
actually established the Board and defines the -- its  
membership as opposed to Section 9.

Otherwise, though, all the -- all the changes  
are as illustrated in the materials.

1 MS. YEE: Okay.

2 MR. LEONARD: Thanks for catching that mistake.

3 MR. HELLER: Yes.

4 MS. YEE: Great. Thank you.

5 Very well. Questions, Members?

6 Hearing none, is there a motion?

7 MR. HORTON: So moved.

8 MS. YEE: Motion by Mr. Horton to adopt the  
9 staff request -- or authorize the Rule 100 change.

10 Is there a second?

11 MS. MANDEL: Second.

12 MS. YEE: Second by Ms. Mandel.

13 Without objection, that motion carries.

14 Thank you.

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## REPORTER'S CERTIFICATE

State of California       )  
                                  )   ss  
County of Sacramento     )

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on January 27, 2010 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 4 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: February 4, 2010.

---

BEVERLY D. TOMS  
Hearing Reporter